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VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 80

PAN AMERICAN PETROLEUM CORPORATION,
PETITIONER,

—*vs.*—

SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY, ET AL.

No. 81

TEXACO, INC., PETITIONER,

—*vs.*—

SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY, ET AL.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF DELAWARE

PETITIONS FOR CERTIORARI FILED MAY 6, 1960
CERTIORARI GRANTED JUNE 13, 1960

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[fol. 1]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 69 1959

COLUMBIAN FUEL CORPORATION, a Delaware corporation,
TEXACO, INC., a Delaware corporation,

and

PAN AMERICAN PETROLEUM CORPORATION,
a Delaware corporation, Petitioners,

—v.—

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and the HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, Respondents.

PETITION FOR WRIT OF PROHIBITION—
Filed November 18, 1959

To the Honorable the Justices of the Supreme Court of the State of Delaware:

Petitioners Columbian Fuel Corporation, Texaco, Inc., and Pan American Petroleum Corporation, respectfully petition this Court for the issuance of a writ prohibiting the respondents, the Superior Court of the State of Delaware in and for New Castle County, and the Honorable Andrew D. Christie, sitting as a judge of that Court, from proceeding further in the following civil actions:

C. A. 670, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—v.—

COLUMBIAN FUEL CORPORATION, a corporation, Defendant.

C. A. 671, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—v.—

THE TEXAS COMPANY, a corporation, Defendant.

C. A. 708, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—v.—

COLUMBIAN FUEL CORPORATION, a corporation, Defendant.

[fol. 2]

C. A. 722, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—v.—

PAN AMERICAN PETROLEUM CORPORATION, a corporation, Defendant.

The basis for this petition is that a state court has no jurisdiction of the subject matter of these civil actions. In support hereof petitioners respectfully represent:

1. The plaintiff in Civil Actions 670, 671, 708 and 722, 1958, in the Superior Court of the State of Delaware in and for New Castle County (hereinafter "Civil Actions 670, 671, 708, and 722"), is Cities Service Gas Company, a Delaware corporation (hereinafter referred to as "plaintiff"). Petitioner Columbian Fuel Corporation, a Delaware corporation, is the defendant in Civil Actions 670 and 708, petitioner Texaco, Inc., a Delaware corporation (formerly "The Texas Company"), is the defendant in Civil Action 671, and petitioner Pan American Petroleum Corporation, a Delaware corporation, is the defendant in Civil Action 722 (each is sometimes hereinafter referred to as "defendant").

2. Plaintiff is an interstate pipeline company which purchases natural gas where produced, transports it interstate

to areas of consumption, and there resells it to local distributing companies. Defendants produce natural gas and sell it to plaintiff for use in its pipeline system.

3. By Civil Actions 670, 671, 708, and 722, plaintiff seeks to recover what it avers were overpayments made by it to defendants for natural gas, $439,406.44 being the amount [fol. 3] demanded in Civil Action 670, $412,955.95 in Civil Action 671, $35,995.19 in Civil Action 708, and $10,324,468-.67 in Civil Action 722.

In its complaints plaintiff in effect avers that it was required during the period in question to make the alleged overpayments to the defendants because of a state administrative order, fixing a minimum price for sales of natural gas, which plaintiff alleges has since been determined by the Supreme Court of the United States to be invalid because excluded by a federal statute, the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.* Plaintiff concludes its complaints by alleging that each defendant agreed to make refunds, that the payments had been made involuntarily by plaintiff, and that they constituted an unjust enrichment of each defendant.

In its answer each defendant denied these allegations of the complaints and alleged, among other things, that during the period in question the sales to plaintiff were subject to regulation under the Natural Gas Act and that the only lawful prices for those sales were controlled by the Natural Gas Act or by rate schedules on file with the Federal Power Commission thereunder.

4. After pleading, each defendant established, by discovery and affidavits, that plaintiff and defendant were both natural gas companies subject to regulation by the Federal Power Commission under the Natural Gas Act and that, during the major portion of the period in question, defendant had had a rate schedule on file with the Federal Power Commission, under the Natural Gas Act, for its sales to plaintiff.

5. Each defendant thereafter moved for summary judgment on the ground, among others, that the "*only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint," either was "fixed by a rate filed with and accepted by the Federal Power Commission,

[fol. 4] under its regulations prescribed under the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.*, and plaintiff does not base its claim upon that filed rate," or was "prescribed by the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.*, and plaintiff does not base its claim upon that Act."

6. Each main brief filed in support of those motions for summary judgment was in substance identical. In its answering brief, which was in substance identical in each of the actions, plaintiff for the first time agreed that the only lawful rates for the sales in issue were the filed rates with the Federal Power Commission. In light of plaintiff's brief, defendants at p. 23 of their reply briefs, which were identical, summed up their positions:

> "If Cities [plaintiff] stands on common law bases, claiming a common law price, then Cities' claims are defeated, for as Cities has agreed, it 'can claim no rate as a legal right that is other than the filed rate, . . .' On the other hand, if Cities does now make a claim on the filed rate, then Cities is out of this court, for there is no power here to adjudicate it."

In their reply brief, defendants then went on to argue that the "federal courts have exclusive jurisdiction of claims based upon the Natural Gas Act and rates on file with the Federal Power Commission under the Act." Moreover, an identical supplemental memorandum, directed solely to the jurisdictional issue, was filed by plaintiff in each of the actions, and an identical answering memorandum was filed by each of the defendants.

7. In support of their jurisdictional argument, defendants relied, in part, upon the decision in *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U. S. 246, 251 (1951), which holds that a purchaser "can claim no rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the Commission, and [fol. 5] not even a court can authorize commerce in the commodity on other terms"; upon § 154.21 of the Federal Power Commission Regulations, which provide that no natural gas company "shall directly or indirectly, demand, charge or collect any rate or charge for or in connection with the

. . . sale of natural gas subject to the jurisdiction of the Commission . . . different from those prescribed in its effective tariff and executed service agreements on file with the Commission. . . . ": and upon § 22 of the Natural Gas Act, 15 U.S.C.A. § 717u, which states:

> "The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this Act or the rules, regulations and orders thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation or order thereunder."

8. On November 12, 1959, after presentation of oral argument in support of defendants' motions for summary judgment in Civil Actions 670, 671, and 708, the Superior Court, acting through the Honorable Andrew D. Christie, sitting as a judge thereof, filed an opinion in those actions in which it decided to deny defendants' motions for summary judgment filed therein. A copy of that opinion is attached as an Exhibit hereof. In its opinion, the Court found that, at least as to the major period involved, the only rate that could be claimed as a legal right was the rate under the Natural Gas Act but concluded that plaintiff asserted such a claim and that the Superior Court had jurisdiction of it.

9. After the filing of defendants' motions for summary judgment in Civil Actions 670, 671, and 708 and the fixing of a brief and argument schedule thereon, plaintiff moved for summary judgment in each of those cases. A brief [fol. 6] schedule was then fixed on plaintiff's motions for summary judgment, but after the presentation of oral argument on defendants' motions for summary judgment in those cases, the Superior Court entered an order in each of those cases directing that the "time for defendant to file its answering brief on plaintiff's pending motion for summary judgment is deferred to and including the twenty-

first day after the court files its opinion on the defendant's motion for summary judgment which is presently under advisement," and that further proceedings on plaintiff's motion be likewise deferred.

10. In Civil Action 722 defendant stipulated to a concurrent briefing schedule and the same argument date for presentation of its motion for summary judgment and the motion for summary judgment filed therein by plaintiff. That stipulation concluded with a provision that "[a]n agreement underlying and controlling the above schedule is that this defendant shall not be required to argue or file briefs in respect to the plaintiff's motion for summary judgment prior to argument or the filing of the corresponding briefs on plaintiff's motions for summary judgment in either of its presently pending refund suits against Columbian Fuel Corporation or The Texas Company (1958 Civil Actions No. 670, No. 671 and No. 708, respectively)." Because of that stipulation argument on defendant's motion for summary judgment has not been held in Civil Action 722, but briefs have been filed therein on defendant's motion which are in substance identical to the briefs filed in Civil Actions 670, 671, and 708, in support of the defendants' motions in those cases which were decided by the opinion of the Superior Court dated November 12, 1959, and the time for the filing of briefs on plaintiff's motion in Civil Action 722 is now also running.

[fol. 7] 11. Petitioners (heretofore "defendants") aver that jurisdiction of claims concerning rates under the Natural Gas Act is exclusively invested in the federal courts, or in the Federal Power Commission, and that the courts of this state have no jurisdiction thereof.

12. Unless prohibited from so doing by this Honorable Court, the Superior Court and the Honorable Andrew D. Christie, sitting as a judge thereof, will proceed in Civil Actions 670, 671, 708, and 722, to hear and determine claims concerning rates under the Natural Gas Act, and petitioners will be required, in order fully to protect themselves, to litigate those claims in that Court.

13. Petitioners do not have any ordinary remedy, or any other remedy as of right, that is adequate to prevent

the Superior Court and the Honorable Andrew D. Christie, sitting as a judge thereof, from proceeding to hear and determine the merits of those claims or otherwise adequately and effectively to protect their rights.

14. By reason of the foregoing, petitioners are entitled to the entry of an order prohibiting the Superior Court, and the Honorable Andrew D. Christie, sitting as a judge thereof, from proceeding further in Civil Actions 670, 671, 708, and 722.

Wherefore, petitioners respectfully ask:

(a) That this Court issue an order, directed to the Superior Court of the State of Delaware in and for New Castle County, and to the Honorable Andrew D. Christie, sitting as a judge thereof, staying all further proceedings in Civil Actions 670, 671, 708, and 722, until further order of this Court herein;

[fol. 8] (b) That this Court issue a rule, directed to the Superior Court of the State of Delaware in and for New Castle County, and the Honorable Andrew D. Christie, sitting as a judge thereof, requiring them to appear before this Court and show cause, if any they have, why a writ of prohibition should not be awarded herein;

(c) That, after such hearing on its rule to show cause as may be conducted, this Court issue a writ of prohibition, directed to the Superior Court of the State of Delaware in and for New Castle County, and to the Honorable Andrew D. Christie, sitting as a judge thereof, prohibiting them from proceeding further in Civil Actions 670, 671, 708, and 722; and,

(d) That such other orders and processes issue herein, and the petitioners have such other relief, as may be appropriate and necessary in the premises.

Columbian Fuel Corporation, Texaco, Inc., Pan-American Petroleum Corporation, By: James M. Tunnell, Jr., Andrew B. Kirkpatrick, Jr., Morris, Nichols, Arsht & Tunnell, 3000 duPont Building, Wilmington, Delaware, Attorneys for Petitioners.

Dated: November 16, 1959.

[fol. 9]

EXHIBIT TO PETITION FOR WRIT OF PROHIBITION

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

670 and 708 Civil Actions, 1958

CITIES SERVICE GAS COMPANY, A corporation, Plaintiff,

—v.—

COLUMBIAN FUEL CORPORATION, A corporation, Defendant.

---

671 Civil Action, 1958

CITIES SERVICE GAS COMPANY, A corporation, Plaintiff,

—v.—

THE TEXAS COMPANY, A corporation, Defendant.

OPINION—November 12, 1959

[fol. 10] On defendants' motion for summary judgment. Denied.

John J. Morris, Jr. and Howard L. Williams (Morris, James, Hitchens & Williams) Attorneys for Plaintiff; Conrad C. Mount, O. R. Stites, Joe Rolston, Gordon J. Quilter and Robert R. McCracken, all of Oklahoma City, Oklahoma, of counsel.

James M. Tunnell, Jr. and Andrew B. Kirkpatrick, Jr. (Morris, Nichols, Arsht & Tunnell) Attorneys for Defendants; Clark, Carr & Ellis, of New York, New York, of counsel, for Columbian Fuel Corporation; Paul F. Schlicher and Alfred C. DeCrane, Jr., both of New York, New York, of counsel, for The Texas Company.

[fol. 11] CHRISTIE, J.:

FACTS

Plaintiff Cities operates pipelines through which it distributes natural gas in interstate commerce for resale to its customers. Defendant Columbian produces natural gas.*

In 1949 and 1951 plaintiff and defendant entered into gas purchase contracts providing for the purchase by the plaintiff over a long period of natural gas produced by defendants in the Hugoton Field of Kansas. The contracts specified the prices to be paid for the gas.

On December 2, 1953, the Corporation Commission of the State of Kansas promulgated a minimum gas price-fixing order covering natural gas produced from the Hugoton Field. The effect of this order was to require plaintiff to pay a price higher than the price agreed upon for the gas in the contracts between plaintiff and defendant.

Plaintiff Cities did not agree to the increased rate, but paid it in order to comply with the order and thus avoid criminal penalties for violation thereof. A letter from [fol. 12] Cities to Columbian, dated January 21, 1954, reads, in part, as follows:

> "Pending final judicial determination of the said Order and beginning January 1, 1954, Cities Service Gas Company intends to pay for all gas purchased by it in the Kansas Hugoton Field in strict compliance with the terms and conditions of the said Order [the Kansas minimum price order dated December 2, 1953]. Such compliance with said Order by this Company, however, is made to avoid the penalties provided by the Kansas Statutes for a violation thereof, and the payments made to you in compliance with said Order pending its final judicial determination are to be considered and accepted by you as involuntary payments on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said Order.

---

*The facts in Civil Action 670, 1958, against Columbian Fuel Corporation are set out because they are, in all material respects, illustrative of the facts in all three actions.

"In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments."

Thereafter, upon each voucher check sent from Cities to Columbian, there was the notation that payment was made subject to the provisions of the letter dated January 21, 1954.

[fol. 13] On June 7, 1954, the United States Supreme Court held that the Federal Power Commission had authority under the Natural Gas Act to regulate sales by producers to interstate pipelines for resale. *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

The Natural Gas Act enacted by Congress on June 21, 1938, had conferred upon the Federal Power Commission general jurisdiction to regulate the sale in interstate commerce of natural gas for resale. 15 U.S.C. § 717(b). After the Natural Gas Act was enacted and before the *Phillips* decision, the FPC had consistently disclaimed jurisdiction over sales by producers at the wellhead, in the belief that these sales were not sufficiently related to interstate commerce. A few days after the *Phillips* decision, on July 16, 1954, the FPC implemented the holding by promulgating FPC Order 174 (subsequently superseded by Order 174-A on August 6, 1954, and still later amended by Order 174-B, in respects not here material), requiring all independent producers such as Columbian to file as their rate schedules "the basic contract and all supplements and agreements amendatory thereof effective and applicable on and after June 7, 1954."

[fol. 14] In November, 1954, Columbian filed with the FPC the basic gas contracts here involved and supplements thereto, together with billing statements. Thus, the original contract rates were filed, along with billing statements reflecting the increased rates paid pursuant to Kansas minimum price order. On February 25, 1955, Columbian filed an addendum to its rate schedule specifically stating that the basis for charging the price shown on the billing statements was effectuation of the minimum prices established by the State of Kansas.

The FPC advised Columbian that this material had "been accepted for filing" but that such acceptance was not to be considered approval of the rate. Cities took no part in this filing process.

On January 20, 1958, the Supreme Court of the United States held that the minimum gas order of the Corporation Commission of Kansas was void on the ground that the order was in conflict with the Natural Gas Act which vests exclusive jurisdiction upon the FPC to regulate such sales of gas in interstate commerce. *Cities Service Gas Company v. Corporation Commission*, 355 U.S. 391 (1958).

[fol. 15] After the Supreme Court held the Kansas order invalid, plaintiff resumed payments for gas purchased at the contract price instead of the price specified in the Kansas order.

Plaintiff made demand on defendants for repayment of the difference between the "contract price" and the amounts actually paid for the gas pursuant to the Kansas price order together with lawful interest thereon. Defendants refused to make any refund, and Cities brought this action to recover the alleged overpayments. The total amount sought is $888,357.58.

Defendants filed an answer raising a number of defenses and after much discovery filed a motion for summary judgment. The grounds originally stated as a basis for defendants' motion for summary judgment were as follows:

> "1. During the period from January 1, 1954, to July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was fixed by a regulation of the State of Kansas, and plaintiff does not base its claim upon that regulation;
>
> "2. During the period after July 16, 1954, the *only* lawful price for the sales of natural gas by defendant [fol. 16] to plaintiff, referred to in the complaint herein, was fixed by a rate filed with and accepted by the Federal Power Commission, under its regulations prescribed under the Natural Gas Act, 15 U.S.C.A. §§717(a) *et seq.*, and plaintiff does not base its claim upon that filed rate; and,

"3. If the Kansas regulation, had not been in effect from January 1, 1954, to July 16, 1954, or if thereafter defendant had had no rate on file with the Federal Power Commission, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, would have been that prescribed by the Natural Gas Act, 15 U.S.C.A. §§ 717(a), *et seq.*, and plaintiff does not base its claim upon that Act."

In the course of the briefing of the motion for summary judgment, both parties agreed that as to the period after July 16, 1954, at least no rate may be asserted as a legal right that is other than the filed rate.

Thus, it became apparent that a major issue in this case is the determination of what rate was the "filed rate" with the FPC during the period in question.

Defendants then asserted the position that this Court lacks jurisdiction to determine the "filed rate" and that it also lacks jurisdiction to determine the status of the rates prior to July 16, 1954, since under the *Phillips* decision these [fol. 17] matters come within the provisions of the Natural Gas Act and as such must be heard in a Federal Court.

It is obvious that the jurisdiction of this Court should be determined before the merits of the defendants' motion for summary judgment are considered.

This opinion addresses itself first to the jurisdictional issue and then to the merits of defendants' motion for summary judgment.

[fol. 18] JURISDICTION

Defendants' contention that this Court lacks jurisdiction to try and determine the dispute is based on Section 22 of the Natural Gas Act which provides, in pertinent part, as follows:

"Sec. 22. The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this act or the rules, regulations, and orders

thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this act or any rule, regulation, or order thereunder . . ." (15 U.S.C.A. § 717u)

Defendants maintain that after July 16, 1954, the only lawful price for the sales of natural gas by defendants to plaintiff was fixed by a rate filed with and accepted by the Federal Power Commission, that a determination of such rates by this Court would be a decision in actions at law brought to enforce a liability or duty created by the Act or a rule, regulation or order thereunder within the meaning of Section 22 of the Act.

[fol. 19] Defendants also point to regulation §154.21 of the Federal Power Commission which directs that no Natural Gas Company shall directly or indirectly demand, charge or collect any rate or charge . . . different from those prescribed in its effective tariff on file with the Commission.

Finally, the defendants maintain that since the whole controversy centers on what charges are required by the rates filed with the Commission under the Act, jurisdiction to determine such issue is plainly vested in the Federal Courts.

Plaintiff, on the other hand, maintains that this Court does have jurisdiction because these are common law actions in contract or for restitution, and the interpretation of the actions of the Federal Power Commission and a determination as to what constitutes the "filed rate" is not, as it is here brought before the Court, a matter over which the Federal Courts are given inclusive jurisdiction by the Natural Gas Act. Plaintiff thus maintains that the determination of a "filed rate" does not constitute the fixing of a rate.

[fol. 20] I find defendants' contention that this Court lacks jurisdiction to be without merit. The actions here asserted are based on contracts and/or restitution and not on the Natural Gas Act. See *Cities Service Gas Company* v. *Skelly Oil Company*, 165 F. Supp. 31 (D.C. Delaware, 1958); *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S.

667 (1950); *United Gas Pipeline Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

The plaintiff may not recover if its right to recover depends on a rate schedule which is contrary to the Natural Gas Act or any rule, regulation or order thereunder. But that is not to say that the action is based on a liability or duty created by such Act. Plaintiff merely asserts a cause of action which may not be inconsistent with federal law or regulation. If recovery is not to be inconsistent with federal law and regulation, such law and regulation must be closely studied and carefully interpreted in this Court. Still the action of this Court in interpreting the filings which have taken place will not constitute the setting of a rate, and a decision of this case on its merits will not involve a decision in an action at law brought to enforce any liability or duty created by the Natural Gas Act or any rule, regulation or order thereunder.

[fol. 21] The Natural Gas Act has provided for federal price regulation but it has not set up any machinery for adjudication of contract disputes of the type before this Court. These cases are not brought under the Act although an interpretation of what was done under the Act will be necessary to resolve the issues raised.

Since this Court has jurisdiction, it must pass upon the merits of defendants' motion for summary judgment. Such decision depends upon the status of the Kansas price order prior to July 16, 1954, and a determination of the rate filed with the FPC after that date.

[fol. 22] VALIDITY OF KANSAS ORDER

Defendants maintain that the Kansas minimum price order was valid until the FPC entered the field. Plaintiff argues that it is settled law that the Kansas minimum price order was void *ab initio*.

Decision on this point depends largely on an interpretation of the meaning of the United States Supreme Court decision in *Phillips Petroleum Co.* v. *Wisconsin, supra.* The problem is whether the Supreme Court there decided that federal jurisdiction was concurrent, and thus state regulation was valid until superseded by federal regulation on July 16, 1954, as defendants contend; or did it decide

that federal jurisdiction was exclusive, and thus any state regulation was invalid *ab initio*, as plaintiff contends.

The first significant case in which the question arose was *Natural Gas Pipeline Co. of America* v. *Panoma Corp., et al.*, 349 U.S. 44 (1955). Natural Gas Pipeline Co. agreed to purchase gas from the Panoma Corp. at a price specified in a contract between them. Soon after the contract was made, Oklahoma enacted its minimum price order fixing a price somewhat higher than that provided for in the contract. Suit was brought by Panoma to force the purchaser Pipeline Co. to comply with the Oklahoma order.

[fol. 23] The Oklahoma Supreme Court held the Oklahoma price order valid and required the purchaser Pipeline Co. to pay the difference between the contract price and the order price for previous years and to pay the order price in the future. The court specifically held that the state regulatory order did not violate the commerce clause of the U. S. Constitution. *Natural Gas Pipeline Co. of America* v. *Panoma Corp., et al.*, —— Okla. ——, 271 P.2d 354. This decision was rendered on September 15, 1953, and petitions for rehearing were denied on March 23, 1954, and on May 25, 1954. Thus, the case was decided after the passage of the Natural Gas Act, but during the period of federal disclaimer of jurisdiction over wellhead prices, and before there was any implementing federal regulation under the Act.

The *Panoma* case was appealed to the United States Supreme Court, where the Oklahoma Supreme Court decision was reversed. *Natural Gas Pipeline Co. of America* v. *Panoma Corp., et al., supra.* The Court holds that under the *Phillips* decision, the FPC had exclusive jurisdiction over wellhead prices. Defendants point out that the U.S. Supreme Court decision was handed down on April 11, 1955, and that by then federal regulation under the Natural Gas Act had begun. Defendants argue that the initiation of federal regulation was an important factor in the reversal. [fol. 24] Defendants' argument is based on an incorrect premise. In deciding a case, a court views facts and surrounding circumstances as they were at the time of the occurrence under litigation, not as of the time the case is finally decided. Applying this principle, the *Panoma* case

dealt in part at least with the status of federal regulation as of 1953.

As before mentioned, in 1953 the Natural Gas Act lay unimplemented on the books, there being a federal disclaimer of jurisdiction over wellhead prices. This was the situation to which the U. S. Supreme Court looked when in *Panoma, supra,* it held the Oklahoma Order invalid. It thus appears that if the state regulation was invalid even in the absence of federal regulation, there never was a time when it could be valid, i.e., it was void *ab initio.* So viewed, the *Panoma* case controls the present one on this point.

The Supreme Court in *Panoma* noted a dissent by Mr. Justice Douglas in the following language:

> "Mr. Justice Douglas being of the opinion that state regulation is permissible until the federal price regulation permitted by *Phillips Petroleum Company* v. *Wisconsin,* 347 U.S. 672, 98 L.Ed. 1035, 74 S.Ct. 794 is imposed, dissents."

It thus appears that the question whether state minimum gas price orders could stand until federal regulation was [fol. 25] imposed was considered by the Supreme Court in conference and the views of Mr. Justice Douglas were rejected.

Later, when the United States Supreme Court held the Kansas minimum price order invalid in *Cities Service Gas Co.* v. *State Corporation Commission,* 355 U.S. 391 (Jan. 20, 1958), the Court, in an opinion by the whole Court, simply stated:

> "Per curiam: The judgment is reversed. *Phillips Petroleum Company* v. *Wisconsin,* 347 U.S. 672, 98 L. Ed. 1035, 74 S.Ct. 794; *Natural Gas Pipeline Co.* v. *Panoma Corp., et al.,* 349 U.S. 44, 99 L.Ed. 866, 75 S.Ct. 576."

The absence of a dissent by Mr. Justice Douglas on this occasion seems to indicate either that his views were still unacceptable to the majority of the court and he did not see fit to urge them further, or that he had acquiesced in the majority view. In any event, the Supreme Court fol-

lowed its reasoning in the *Panoma* case and held the Kansas regulation invalid from its inception.

The above analysis of the decisions of the United States Supreme Court appears to have been accepted in part at least in the Fifth Circuit in *Natural Gas Pipeline Co. of America* v. *Harrington*, 246 F.2d 915, cert. denied 356 U.S. 957 (1958); by the Third Circuit in *Natural Gas Pipeline* [fol. 26] *Co. of America* v. *Federal Power Commission*, 253 F.2d 3, cert. denied 357 U.S. 927 (1958); and by the Tenth Circuit in *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F.2d 860, cert. denied 358 U.S. 837 (1958).

In the Fifth Circuit case, a second petition for rehearing was filed by Harrington contending that the Oklahoma Order was valid to July 16, 1954. This contention was rejected by the Court in its 253 F.2d 231 per curiam order dated March 5, 1958, wherein the Court said:

> "Per curiam: Leave to file a second petition for rehearing is denied. *Natural Gas Pipeline Co. of America* v. *Panoma*, 349 U.S. 44. The notation of Mr. Justice Douglas' dissent shows that the Court considered the question presented by this second petition for rehearing."

Finally, the Supreme Courts of Oklahoma and of Kansas have decided against the proposition advanced by the defendants here. The Oklahoma Supreme Court issued an order to the Oklahoma Corporation Commission on March 20, 1958, which read, in pertinent part, as follows:

> "That Order No. 26096 of the corporation commission of the State of Oklahoma which is the subject of appeals to this Court and the Supreme Court of the United States be, and the same is, hereby reversed, set aside and held for naught in its entirety."

[fol. 27] The Kansas Supreme Court, in *Cities Service Gas Co.* v. *Corporation Commission*, 184 Kan. 540, 337 P.2d 640, cert. denied October 12, 1959, held that the Kansas minimum price order,

> "invaded the jurisdiction of the Federal Power Commission and was not within the jurisdiction of the State

Corporation Commission to enter, even though the Federal Power Commission had not exercised jurisdiction in the matter."

This Court has read with care the provocative dissenting opinion of Fatzer, J., in the Kansas case. However, I regard the opinion of the majority as better reasoned and it is now the well established view.

In my opinion, the Kansas minimum price order was void *ab initio* and never legally imposed any obligation on Cities to pay a price for gas different from that expressed in the gas purchase contracts.

As to the period before July 16, 1954, the state's price regulations were void. Since there were no "filed" rates with the FPC, there was no effective governmental price regulation in this field and as between the parties, the rates specified in their contracts would govern. The argument that the only legal rate was the "filed" rate cannot find application as to the period when there was no filed rate and no one knew that rates should be filed.

[fol. 28] As to the period prior to July 16, 1954, defendants' motion for summary judgment is without merit.

[fol. 29] THE LEGAL RATE AFTER JULY 16, 1954

Both parties agree that as to the period after July 16, 1954, the only legal rate is the filed rate "and not even a court can authorize commerce in a commodity on other terms." *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 251 (1951). The question then becomes what rate was legally filed? Plaintiff claims that the rate filed was the contract rate, while defendant Columbian claims that the rate filed was the rate prescribed by the Kansas minimum price order.

The question is not accurately put when we ask what was the "filed rate" since obviously the rates advocated by each party were on file with the FPC. The question really is which of the rates filed with the FPC is the legal rate binding upon the parties before this Court.

Defendants' position is that their action in tendering rate schedules to the FPC and the action of the FPC in accepting these schedules for filing made the rate pre-

scribed by the Kansas minimum price order the legally filed rate.

The letters of acceptance written by the FPC to Columbian at the time the rates were filed tend to indicate that the FPC was of the opinion that neither the unilateral act [fol. 30] of filing by the seller (such as defendant) nor that of the Commission in accepting the rate for filing was sufficient to increase a rate over that in the original contract. Such letters contain the following qualifying provision:

> "This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been made or may hereafter be made by the commission in any proceedings now pending or hereafter instituted by or against your company."

That a change in rate cannot be brought about by unilateral action was clearly established by the Supreme Court in *United Gas Pipeline Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956). The Supreme Court there explained that the original contract rate is not changed by unilateral action unless and until it is changed in a proceeding under Section 4(a) and (c) or Section 5(2) of the Act, requiring notice to the parties and an opportunity to be heard. [fol. 31] Since the Kansas minimum price order was void, the filing of rates involuntarily paid thereunder was no more effective than was the filing in the above cited case. See also *Cities Service Gas Co.* v. *Federal Power Commission, supra.*

Defendants' contention that the filing of the rates paid under protest on account of the Kansas order made such rates the legal rate under the Natural Gas Act is without merit.

Defendants next attempt to establish that the rates required by the Kansas order were the contract rates because under a clause in the original gas purchase contract, the contract price can be changed at any time by an order such as that issued by the Kansas Commission. The clause reads:

> "This Agreement is subject to all present and future laws and valid orders, rules and regulations of any regulatory body having jurisdiction."

According to defendants, the Kansas order was in effect until federal regulation began on July 16, 1954, and determined prices up to that time.

[fol. 32] The clause clearly states that the agreement is subject to any subsequent "*valid* order". This Court has already determined that the Kansas order was void *ab initio* and thus the clause can have no application here.

Since the Kansas order is a nullity and the filing of rates required thereunder did not change the rate set up in the original contract or establish a new legal rate, what then is the rate on file with the FPC, and thus the legal rate for the period prior to July 16, 1954?

The Federal Power Commission's position on this matter, as stated in its brief to the Circuit Court in *Cities Service Gas Co.* v. *Federal Power Commission,* 255 F.2d 860, cert. denied 358 U.S. 837 (1958), was that:

> "Since the Kansas order has been declared invalid on the date of filing, it was never a part of the filed rate, and Cities Service is not barred by the filed 11¢ rate from recovering any payments made by it in excess of the contract price."

and further that the:

> "rate as we have seen is the 6¢ contract rate in view of the invalidity of the Kansas order, not the 11¢ rate reflected in the billing statements."

The Circuit Court accepted the FPC position and in the *Cities Service* case, *supra,* held:

> [fol. 33] "When the United States Supreme Court struck down the Kansas order there was no longer

a valid order which could modify the contract rate and the contract rate was the rate effective . . ."

To the same effect is the decision of the Fifth Circuit in *Natural Gas Pipeline Co. of America* v. *Harrington, supra,* and of the Third Circuit in *Natural Gas Pipeline Co. of America* v. *Federal Power Commission, supra.*

The Court holds, as a matter of law, that implicit in the acceptance by the Commission of the Kansas minimum price order was the validity of that order. If said order were valid, the rate prescribed therein would indeed constitute the filed rate of defendants with the Federal Power Commission. However, since the Kansas order was void, the only lawful filed rate is the contract rate, unaffected by the Kansas order.

Defendants' motion for summary judgment is denied.

[fol. 34]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

[Title omitted]

AFFIDAVIT OF JAMES M. TUNNELL, JR.

State of Delaware,
County of New Castle, *ss*:

Be It Remembered that on this 16th day of November, 1959, personally appeared before me, the subscriber, a Notary Public for the State and County aforesaid, James M. Tunnell, Jr., who being by me first duly sworn according to law did depose and say that he is a member of the Bar of the State of Delaware; that he is attorney for Columbian Fuel Corporation, the defendant in Civil Actions 670 and 708 in the Superior Court of the State of Delaware in and for New Castle County, for Texaco, Inc. (formerly "The Texas Company"), the defendant in Civil Action 671 in the Superior Court of the State of Delaware in and for New Castle County, and for Pan American Petroleum Corporation, the defendant in Civil Action 722 in the Superior Court of the State of Delaware in and for New Castle County, and is attorney for those corporations herein; that what is stated in paragraphs 1 through 10 of the [fol. 35] attached petition is true; and that what is stated

in paragraphs 11 through 14 of the attached petition he believes to be true.

James M. Tunnell, Jr.

Sworn to and Subscribed before me the day and year aforesaid.

Evelyn P. Cashell, Notary Public.

[Notarial Seal]

[fol. 36] Acknowledgment of service (omitted in printing)

[fol. 37]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 69, 1959

[Title omitted]

ORDER UPON PETITION FOR WRIT OF PROHIBITION—November 17, 1959

Now, this 17th day of November, 1959, the petition herein for a writ of prohibition having been presented in chambers, with counsel for plaintiff in Civil Actions 670, 671, 708, and 722, 1958, in the Superior Court of the State of Delaware in and for New Castle County in attendance,

It Is Hereby Ordered:

1. That a rule of this Court is awarded, to be directed to the respondents, the Superior Court of the State of Delaware in and for New Castle County and the Honorable Andrew D. Christie, sitting as a judge of that Court, requiring them to appear before this Court at a Special session thereof which shall be held on January 25th, 1960, at 10:30 A.M., at Dover, Delaware, to show cause, if any there be, why the writ of prohibition should not be issued as prayed for herein;

[fol. 38] 2. That the respondents herein may file an answer, answering affidavits, or any other defense to that rule by way of motion or otherwise, on or before November 27th, 1959, and petitioners may file affidavits in rebuttal on or before December 10th, 1959;

3. That petitioners shall file their brief in support of their petition on or before December 14th, 1959, respondents and any intervening parties, if any there shall be, may file briefs in opposition to the petition on or before January 6th, 1960, and petitioners may file a reply brief on or before January 20th, 1960;

4. That the rule herein, together with a copy of the petition and this order, shall be served forthwith by the Sheriff of Kent County, by leaving with the Prothonotary of the Superior Court of the State of Delaware in and for New Castle County, with the Honorable Andrew D. Christie sitting as a judge of that Court, and with Howard L. Williams, Esquire, attorney for plaintiff in Civil Actions 670, 671, 708, and 722, 1958, in that Court, a copy of said rule, petition and order, certified by the clerk of this Court to be a true and correct copy thereof; except that such service need not be made by the Sheriff of Kent County on those persons who, prior to formal service, shall have acknowledged the receipt of said rule, petition and order, certified as aforesaid; and that the Sheriff of Kent County shall make return to this Court of his proceedings hereunder on the return day of said rule;

5. That the Prothonotary of the Superior Court of the State of Delaware in and for New Castle County shall forthwith transmit to the clerk of this Court the original records in Civil Actions 670, 671, 708, and 722, 1958, in that Court; [fol. 39] that said Prothonotary shall append thereto his certificate or certificates identifying such records with reasonable definiteness; and that said Prothonotary shall transmit therewith a copy, certified by him, of the docket entries in those actions and a statement of the cost of making up and certifying the record; and,

6. That all further proceedings in the Superior Court of the State of Delaware in and for New Castle County in Civil Actions 670, 671, 708, and 722, 1958, shall be, and they hereby are, stayed until the further order of this Court; ~~but said stay shall automatically terminate on November _____, 1959, at _____ M., as to those Civil Actions in which the defendant therein, which is a petitioner herein, shall fail, on or before that date, to file with the clerk~~

~~of this Court a surety bond, with or without the petitioner joining therein, to be approved by one of the Justices of this Court, in the sum of Dollars ($), and each said surety bond shall be conditioned so that, if the petitioner shall appear in this Court and prosecute its petition to effect or, if it should fail to make its petition good, shall indemnify the plaintiff against loss, damage, or injury as a result of such stay in that Civil Action or actions in which the petitioner is a defendant and shall pay its share of the costs of this proceeding in this Court, then said obligation shall be void; otherwise to be and remain in full force and virtue.~~

7. Leave is hereby granted to Cities Service Gas Company, plaintiff below, to appear in this cause as Intervening Respondent.

Daniel F. Wolcott, Justice.

[fol. 40]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 69 1959

COLUMBIAN FUEL CORPORATION, a Delaware corporation; TEXACO, INC. a Delaware corporation; and PAN AMERICAN PETROLEUM CORPORATION, a Delaware Corporation, Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and the HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, Respondents,

CITIES SERVICE GAS COMPANY, a Delaware corporation, Intervening Respondent.

ANSWER OF INTERVENING RESPONDENT CITIES SERVICE GAS COMPANY TO RULE TO SHOW CAUSE—Filed November 27, 1959

Comes Now Cities Service Gas Company (Cities), intervening respondent in the above causes, and for answer to

the Rule to Show Cause awarded herein by this Court on November 17, 1959, respectfully alleges and states:

1. Cities admits each and every allegation contained in paragraphs numbered 1 and 2 and the first grammatical paragraph of paragraph numbered 3 of petitioners' Petition for Writ of Prohibition in said causes.

2. Cities admits that the various pleadings, motions, briefs, and other documents referred to in paragraphs numbered 3 through 10 of said petition were filed and constitute a part of the record in the above causes, but states that said instruments speak for themselves and, accordingly, Cities denies any conclusions drawn therefrom by [fol. 41] petitioners in said paragraphs numbered 3 to 11, inclusive.

3. Cities denies each and every allegation contained in paragraphs numbered 11 and 12 of said petition. Cities alleges and states that, on the contrary, the Superior Court of New Castle County, State of Delaware, has jurisdiction over the parties and the subject matter of the above causes; that said causes of actions are between citizens of Delaware for the recovery of money based on contracts and/or restitution, as shown by the following facts of record:

(a) In 1949 and 1951 Cities and petitioners entered into Gas Purchase Contracts providing for the purchase by Cities of natural gas produced by petitioners from the Hugoton Field of Kansas. The Gas Purchase Contracts specified the prices to be paid for gas so produced.

(b) On December 2, 1953, the Corporation Commission of the State of Kansas promulgated a minimum gas price-fixing Order, effective January 1, 1954, covering natural gas produced from said Hugoton Field of Kansas. The effect of this Order was to require Cities to pay petitioners a price higher than the price agreed upon for the gas in the Gas Purchase Contracts between Cities and petitioners.

(c) Cities did not agree to the increased price but paid it involuntarily, under business compulsion and under compulsion of said Order, in order to comply with the Order and thus avoid criminal penalties for violation thereof.

After said Order was issued and before any payments were made thereunder, Cities addressed a letter dated January 21, 1954, to petitioners, which letter reads as follows:

> [fol. 42] "The State Corporation Commission of the State of Kansas, by Order dated December 2, 1953, in Docket No. 44,079-C(C-3216) directed that on and after January 1, 1954, as a condition precedent for withdrawal of gas from the Hugoton Gas Field in Kansas, there shall be paid therefor or attributed thereto, at the wellhead, a minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.).
>
> "Cities Service Gas Company and certain other parties filed Petitions in the District Court of Finney County, Kansas, for a judicial review of the said Order.
>
> "Pending final judicial determination of the said Order and beginning January 1, 1954, Cities Service Gas Company intends to pay for all gas purchased by it in the Kansas Hugoton Field in strict compliance with the terms and conditions of the said Order. Such compliance with said Order by this Company, however, is made to avoid the penalties provided by the Kansas Statutes for a violation thereof, and the payments made to you in compliance with said Order pending its final judicial determination are to be considered and accepted by you as involuntary payments on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said Order.
>
> "In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments."

Each and every voucher check transmitted from Cities to petitioners in payment for gas purchased during the period involved in the respective causes of action herein,

contained a notation thereon that payment was made subject to the provisions of said letter dated January 21, 1954. Petitioners received said letter of January 21, 1954, and the voucher check tendering payment on the conditions set out in said letter of January 21, 1954. Petitioners likewise cashed each such voucher check so tendered and retained the proceeds thereof without any objection to the terms on which they were tendered.

(d) On January 20, 1958, the Supreme Court of the United States held, in the litigation referred to in said letter of January 21, 1954, that the minimum gas price-fixing [fol. 43] Order of the Corporation Commission of Kansas was void; *Cities Service Gas Co.* v. *Corp. Comm.*, 355 U.S. 391 (1958). Thereafter the Kansas Supreme Court in construing the mandate of the Supreme Court of the United States in the case last above referred to held that the Kansas price-fixing Order was void ab initio for lack of jurisdiction of the Kansas Corporation Commission to issue the same; *Cities Service Gas Company* v. *Kansas Corp. Comm.*, 184 Kan. 540, 337 P.2d 640, and on October 12, 1959, the Supreme Court of the United States denied a review of said determination of the Kansas Supreme Court; *Cities Service Gas Company* v. *Kansas Corp. Commission*, —— U.S. ——.

(e) Cities thereupon resumed payments for gas purchased from petitioners at the contract price instead of the state-ordered minimum price and made demand upon petitioners for repayment of the difference between the contract price set forth in the respective Gas Purchase Contracts and the amounts actually paid for gas at the rate prescribed in the void Kansas Price Order, together with lawful interest thereon. Petitioners refused to make any refund and Cities brought these actions to recover such overpayments.

4. Cities respectfully submits that it is patent from the facts set forth above and set out in Cities' Complaints herein that Cities' causes of action rest upon well recognized common law principles applicable to contracts and/or restitution. As shown by Cities' Complaints herein, Cities'

causes of action are based exclusively upon contract, or alternatively, upon restitution. The theory of Cities' case as set forth in said Complaints is that payments to petitioners pursuant to the letter of January 21, 1954, and the receipt and retention of such payments, subject to the provisions of said letter, constitute a contract by petitioners to refund the overpayments herein sought to be recovered. Alternatively, as particularly set forth in said Complaints, [fol. 44] Cities seeks restitution based upon overpayments paid to petitioners involuntarily under business compulsion and under compulsion of the void Kansas minimum price Order to comply with said Order and thus avoid the criminal penalties imposed by law for violation thereof. No reference is made anywhere in said Complaints to the Natural Gas Act or to any Order, rule or regulation of the Federal Power Commission thereunder, nor does Cities rely on any violation of said Act by petitioners.

5. Cities specifically denies that its causes of action herein are for "violations of this Act" [Natural Gas Act] or the "rules, regulations and orders thereunder," or that said causes are "suits in equity and actions at law brought to enforce any liability or duty created by or to enjoin any violation of this Act or any rule, regulation or order thereunder."

6. Cities hereby specifically incorporates herein, by reference, the Complaints of Cities filed in the above causes herein, as well as the Opinion of the Superior Court of New Castle County, State of Delaware, and specifically relies upon said Complaints and Opinion.

Wherefore, Cities Service Gas Company respectfully prays that a Writ of Prohibition herein be denied.

Cities Service Gas Company, By Howard L. Williams, Henry N. Herndon, Jr.

Morris, James, Hitchens & Williams, 701 Bank of Delaware Building, Wilmington, Delaware, Attorneys for Intervening Respondent.

Of Counsel, Conrad C. Mount, Robert R. McCracken, Charles V. Wheeler, First National Building, Oklahoma City 1, Oklahoma.

[fol. 45] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 45a] [File endorsement omitted]

[fol. 46]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 69, 1959.

COLUMBIAN FUEL CORPORATION, a Delaware corporation, TEXACO, INC., a Delaware corporation, and PAN AMERICAN PETROLEUM CORPORATION, a Delaware corporation, Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and the HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, Respondents,

and

CITIES SERVICE GAS COMPANY, a Delaware corporation, Intervening Respondent.

PETITIONERS' MAIN BRIEF IN SUPPORT OF THEIR PETITION FOR A WRIT OF PROHIBITION—Filed December 14, 1959

* * * * * * *

[fol. 47] C. Proceedings in the Superior Court in Civil Actions 670, 671, 708 and 722.

* * * * * * *

[fol. 48] When the Superior Court rendered an opinion on what the filed rates were, it therefore ruled upon a question which defendants thought was not before the Court and on which these defendants had not been heard. We think the question of what the filed rates were is no

more before this Court than it was before the Superior Court on defendants' motions.

We submit that the sole question that is before this Court and was before the Superior Court on defendants' motions is this:

> Assuming defendants' filed rates are as the plaintiff claims identical with what it claims are the contract prices, do the courts of this state, or any state, have jurisdiction to entertain a claim based upon the contract prices?

This question very obviously does not reach the dispute between plaintiff and the defendants of whether the filed rates are what the plaintiff claims or what the defendants claim.

. . . . . .

[fol. 49] D. No Authority Supports the Superior Court's Decision That It Has Jurisdiction of a Suit Asserting Liability for Deviation From the Filed Rate.

. . . . . .

[fol. 50] If plaintiff had rested its cases against these defendants upon common law bases and ignored the Act and filed rates, as it did in *Skelly*, we would certainly agree that there would have been no jurisdiction in the federal courts. But after it had defeated removal in *Skelly*, Cities in the suits here involved commenced to rely upon filed rates and proceeded with argument as to what they [fol. 51] were. And, in fact, the Superior Court found that plaintiff could proceed only on this basis. It is these developments, not present in *Skelly*, which here present the jurisdictional infirmity.[25]

. . . . . .

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[25] Actually, if a state court does not itself have jurisdiction because that of the federal courts is exclusive, then a federal court cannot acquire jurisdiction by removal even though it would, of course, have jurisdiction of a suit originally instituted before it. *Lambert Run Coal Company* v. *B. & O. R. R.*, 258 U. S. 374 (1922); *Southern Pacific Co.* v. *City of Willow Glen*, 49 F. 2d 1005 (9th Cir. 1931); and, *Jewell* v. *Cleveland Wrecking Co.*, 28 F. Supp. 364, 366 (Mo. 1938) ("A removal proceeding acknowledges the jurisdiction of the state court").

[fol. 51a] [File endorsement omitted]

[fol. 52]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 69, 1959

COLUMBIAN FUEL CORPORATION, a Delaware corporation, TEXACO, INC., a Delaware corporation, and PAN AMERICAN PETROLEUM CORPORATION, a Delaware corporation, Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and the HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, Respondents,

and

CITIES SERVICE GAS COMPANY, a Delaware corporation, Intervening Respondent.

Reply Brief of Petitioner, Pan American Petroleum Corporation, in Support of the Petition for a Writ of Prohibition and in Opposition to the Briefs of the Intervening Respondent and the Amicus Curiae—Filed January 21, 1960

[fol. 53] Statement of Facts

* * * * * * *

On page 7 of its brief Cities states that the contract upon which it is suing consists of the letter of January 21, 1954, set forth on pages 4 and 5 thereof, and the receipt and retention of payments allegedly made subject to the letter. [fol. 54] In this connection Cities fails to state that its letter of January 21, 1954, to Pan American has never been filed with the Federal Power Commission as part of the rate schedule applicable under the Natural Gas Act to the

sale of gas in issue. Cities also fails to state that none of the "voucher checks" referred to on pages 5 and 6 of its brief has ever been filed with the Federal Power Commission as part of Pan American's rate schedule. An examination of Pan American's rate schedule certified to December 5, 1958, attached as Exhibit "3" to Cities' Motion for Summary Judgment in C. A. 722, will verify these statements.

What Cities has failed to disclose is that it has brought an action against Pan American on an alleged contract which is not a part of the rate schedule on file with the Federal Power Commission. It has also failed to disclose that, with respect to deliveries of gas from June 7, 1954, to June 30, 1957, incl., the rate schedule, which the Federal Power Commission had made effective and applicable to said sale, consisted, insofar as the issues involved here are concerned, of the Gas Purchase Contract of June 23, 1950, (Exhibit "A" to Compl:) and the Kansas minimum price order, (Supplement No. 77 to FPC Rate Schedule 84 as shown in Exhibit "3" above). With respect to deliveries of gas from July 1, 1957, to date, Exhibit "3" also shows that the rate schedule consisted essentially of the contract of June 23, 1950, the Kansas minimum price order and an unprotested and unsuspended change in rate from 11¢ to 11.0715¢ per Mcf at 14.65 psia, (Supplement No. 80 to Rate Schedule 84 as shown in Exhibit "3" above).

• • • • • • •

[fol. 54a] [File endorsement omitted]

[fol. 55]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 69, 1959.

COLUMBIAN FUEL CORPORATION, a Delaware corporation, TEXACO, INC., a Delaware corporation, and PAN AMERICAN PETROLEUM CORPORATION, a Delaware corporation, Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, Respondents,

and

CITIES SERVICE GAS COMPANY, a Delaware corporation, Intervening Respondent.

OPINION—February 25, 1960.

Southerland, C.J., and Wolcott and Bramhall, JJ., sitting.

Petition for writ of prohibition to the Superior Court of New Castle County. Petition denied.

James M. Tunnell, Jr. of Morris, Nichols, Arsht & Tunnell, of Wilmington, Attorney for Petitioners:

Clark, Carr & Ellis, of New York City, for Petitioner Columbian Fuel Corporation; Paul F. Schlicher and Alfred [fol. 56] C. De Crane, Jr., of New York City, for Petitioner Texaco, Inc.; W. W. Heard of Tulsa, Oklahoma, for Petitioner Pan American Petroleum Corporation.

Howard L. Williams of Morris, James, Hitchens & Williams, of Wilmington, and C. C. Mount, of Oklahoma City, and Jack Werner, of Washington, D.C., for Intervening Respondent Cities Service Gas Company.

Edmund D. Lyons of Morris, James, Hitchens & Williams, of Wilmington, and John T. Grant, of Omaha, Nebraska, for Northern Natural Gas Company, Amicus Curiae.

Southerland, C.J.:

The petition attacks the jurisdiction of the court below to entertain four actions at law brought by Cities Service Company against three defendants, the petitioners above named. In these actions Cities seeks to recover from defendants large sums of money representing part of the payments made by Cities to defendants for natural gas between January 1, 1954 and late 1957.

The factual background of the claims is as follows:

Cities is a natural gas pipeline company. It transports natural gas from Hugoton Field in Kansas, in interstate commerce, to local distributing companies. Defendants are producers of natural gas from that field.

In 1949, 1950 and 1951 Cities and the defendants entered into contracts for the sale of gas by defendants to Cities at prices less than eleven cents a thousand cubic feet, [fol. 57] measured on a pressure base of 14.65 pounds per square inch absolute. Since the execution of these contracts defendants have supplied Cities with gas from the Hugoton Field.

Prior to the execution of these contracts Congress had adopted the Natural Gas Act. Act of June 21, 1938, 15 U.S.C.A. §717. The Federal Power Commission was empowered to regulate the sale in interstate commerce of natural gas for resale. Because of an exemption in the act the Federal Power Commission thereafter disclaimed jurisdiction over sales by producers, such as defendants.

On December 2, 1953, the Corporation Commission of the State of Kansas promulgated an order, effective January 1, 1954, fixing a minimum price of not less than 11¢ per M.c.f., measured on a pressure base of 14.65 p.s.i.a., to be paid for natural gas produced by defendants from the Hugoton Field. Cities and others filed suit in the Kansas courts for a judicial review of the order.

On January 21, 1954, Cities wrote a letter to each of the defendants with respect to the Kansas Commission order.

After stating that Cities had filed suit to obtain judicial review of the order, Cities notified the defendants that it intended to pay for gas purchased from the Hugoton Field in strict compliance with the terms of the order; that such compliance was made to avoid the penalties provided by the Kansas statutes for violation; and that payments to the defendants "are to be considered and accepted by you as involuntary payments on our part, without prejudice to our rights in said litigation * * *". Cities added:

> [fol. 58] "In the event the said Order is judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments."

Each voucher check sent to each of the defendants in payment of gas purchased during the period involved in these suits contained a notation that payment was made subject to the provisions of the letter of January 21, 1954. Each defendant accepted its checks and cashed them, and made no objection to the conditions on which they were tendered.

For the sake of convenience we shall refer to these documents as "the refund contracts", recognizing that the defendants do not concede their legal effect.

On June 7, 1954, the Supreme Court of the United States, reversing a decision of the Federal Power Commission, held that rates of "all wholesales of natural gas in interstate commerce," including rates of producers, were subject to the Commission's jurisdiction. *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 74 S.Ct. 794.

The Natural Gas Act requires natural gas companies to file rate schedules with the FPC, under such regulations as the Commission may prescribe. §717c(c).

On July 16, 1954, the Commission issued order No. 174, later replacing it or supplementing it with orders No. 174-A [fol. 59] and No. 174-B. These orders dealt with the regulation of "independent producers" under the Natural Gas Act. These producers were required to apply for certifi-

cates of public convenience and necessity, and were directed to file with the Commission "rate schedules as defined in Section 154.93 hereof, setting forth the terms and conditions of service and all rates and charges for such transportation or sale effective on June 7, 1954." By §154.93 a rate schedule was defined as "the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954."

Defendants duly filed the application and documents required. These documents included copies of the contracts with Cities, copies of the Kansas Price Order, and statements showing that the price to Cities on June 7, 1954, was 11¢ per M.c.f. at the specified pressure.

As these documents were filed, the Commission duly convened and voted to accept them for filing. The Commission so notified each defendant that its schedules had been accepted without constituting the acceptance as approval of any rate or charges, and without prejudice to any orders of the Commission that might affect the company so filing.

In 1956 the Supreme Court of Kansas sustained the validity of the Kansas Corporation Commission's order of December 2, 1953 (180 Kans. 454, 304 P.2d 528), but on [fol. 60] appeal the Supreme Court of the United States on January 20, 1958, reversed (355 U.S. 391, 78 S.Ct. 381), citing the *Phillips* decision and the decision in *Natural Gas Pipe Line Co. v. Panoma Corporation* (1955), 349 U.S. 44, 75 S.Ct. 578.

In the *Panoma* case the Supreme Court had held in 1955 that a similar price fixing order of the Oklahoma Corporation was void. From the dissenting opinion of Mr. Justice Douglas, it seems clear that the order was held void *ab initio*.

Applying these decisions the Supreme Court of Kansas on April 11, 1959, held that the Kansas Commission's order was void *ab initio*. 184 Kan. 540, 337 P.2d 640.

In 1958 Cities filed the four suits which are now before us. The complaints are substantially the same. They set forth the original gas contracts between the parties; the facts concerning the issuance of the Kansas price-fixing order; the refund contracts; the increased prices for gas

effected by the Kansas order; and the invalidation of that order by the Supreme Court of the United States.

By reason of these facts, it is alleged that defendants agreed in writing to refund plaintiff the over-payments; that such payments were made under compulsion; that defendants are justly indebted to plaintiff in the amount of such over-payments; and that to permit defendants to retain such over-payments would constitute unjust enrichment.

The answers deny the legal effect of the refund contracts [fol. 61] and deny that the payments were made involuntarily. The answers further set forth the facts with respect to the assumption of jurisdiction over defendants' rates of the Federal Power Commission and the filing of defendants' rate schedules, and their acceptance by the Commission. The answers further allege that the filed rate has never been decreased; that the exclusive means authorized by the Natural Gas Act and the rules of the Commission have never been utilized to contest or challenge the rate schedules; and that the rate schedules have at all times remained the legally effective rate for the sales of gas by defendants to Cities.

Subsequently the parties supplemented the record by discovery proceedings and by affidavit, and the defendants moved for summary judgment. The grounds for the motion were that the only lawful price for the sales of natural gas during the period prior to July 16, 1954, was that fixed by the Kansas order; and that during the period after July 16, 1954, the only lawful price was that fixed by the rate filed and accepted by the Commission.

Defendants' contention in support of this motion was stated in the alternative: If Cities was seeking to recover payments in excess of the contract price, it had no case, since the only lawful price for gas sold by them during the periods in question was fixed by the Kansas price order and by the rate schedules filed by the Commission. If, on [fol. 62] the other hand, the Natural Gas Act excluded the Kansas order, then Cities was seeking to recover payments allegedly in excess of natural gas rates, in which event jurisdiction to determine the claims was vested exclusively

in the federal courts by the express provisions of the Natural Gas Act.

The trial court held that the actions were suits founded on the contracts to refund excessive payments, and not on the Natural Gas Act. Agreeing with the defendants that the only legal rate is the filed rate, it held that the contract action could be maintained if it is not inconsistent with federal law or regulation. It further held that as a matter of law the only lawful filed rate is the contract rate—a ruling that the defendants assail as unnecessary because they had not tendered such an issue.

Defendants bring these rulings before us by way of a petition for a writ of prohibition.

Basic to defendants' case (in whatever form developed) is the question of jurisdiction. Has a state court jurisdiction to entertain the actions?

Section 22 of the Natural Gas Act (15 U.S.C.A. §717u) provides in part:

> "The district Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this act or the rules, regulations, and orders [fol. 63] thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this act or any rule, regulation, or order thereunder."

Does Cities seek to enforce a "liability or duty created by" the Act? In form, at least, its action is clearly one based on the refund contracts—not upon the contracts filed with the Commission, but upon the refund contracts by which the defendants agreed to make restitution.

But the defendants insist that, whatever the form of these actions, they are in effect actions for charges allegedly in excess of a filed rate, and therefore seek to enforce a liability created by the Act. Defendants do not point to any provision of the Act specifically authorizing suits to recover overpayments of gas rates, such as found in the Interstate Commerce Act. Their argument runs as follows:

The filed rate, defendants say, is the only lawful rate; by federal law no deviation from it is permitted; if more or less than the filed rate is paid, such payment is a violation of federal law, and a suit to redress the wrong may be brought only in the federal courts. Hence (defendants seem to say) the refund contracts have no validity in th mselves as a ground for a common law action in the state courts; any rights that Cities may have in its present situation flow from the rate provisions of the Natural Gas Act.

This leads to the question: To what extent does the [fol. 64] Act impair the validity of private contracts relating to gas rates?

It is authoritatively settled that the Natural Gas Act, unlike the Interstate Commerce Act, does not abrogate private rate contracts as such. *United Gas Pipe Line Company* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 76 S.Ct. 373. In that case the gas contract between United and Mobile had been duly filed with the FPC. Later Mobile attempted to change the rate fixed in the contract by filing a new rate schedule. The Commission accepted it, holding that it would become effective unless after investigation the Commission should determine it to be unlawful. The Supreme Court held that the rate could not be so changed by unilateral action. The Court said:

> "In construing the Act, we should bear in mind that it evinces no purpose to abrogate private rate contracts as such. To the contrary, by requiring contracts to be filed with the Commission, the Act expressly recognizes that rates to particular customers may be set by individual contracts. In this respect, the Act is in marked contrast to the Interstate Commerce Act, which in effect precludes private rate agreements by its requirement that the rates to all shippers be uniform, a requirement which made unnecessary any provision for filing contracts."

Referring to the provisions of Sections 4 and 5 of the Act, relating to changes in rates and to the regulatory powers of the Commission, the Court also said:

[fol. 65] "These sections are simply parts of a single statutory scheme under which all rates are established initially by the natural gas companies, by contract or otherwise, and all rates are subject to being modified by the Commission upon a finding that they are unlawful. The Act merely defines the review powers of the Commission and imposes such duties on natural gas companies as are necessary to effectuate those powers; it purports neither to grant nor to define the initial rate-setting powers of natural gas companies."

In the cases at bar the gas purchase contracts were duly filed, along with the Kansas price-fixing order. Cities never agreed to the increased rate set by that order, so that the filing of the order by the defendants was not an agreed change in the rate.

Moreover, it has been authoritatively settled that the Kansas order was void *ab initio*, as above set forth. And the federal courts have also held that the effect of that holding was to leave the contract rate as the only lawful rate. In *Natural Gas Pipeline Company* v. *Federal Power Commission*, (3rd CCA) 253 F.2d 7, the distributor assailed an order of the FPC directing the filing of an increased rate based on a price-fixing order of the Oklahoma Corporation Commission, later held invalid by the Supreme Court. In reviewing the Commission's order the Third Circuit Court of Appeals said:

"The contract rate could only be changed, then, (unless the parties consented) after a hearing by the Commission as to its lawfulness unless, as set out in [fol. 66] the agreement itself, a valid law and lawful orders of regulatory bodies having jurisdiction over the parties affected it. It was expressly because of these elements that Natural, after the Oklahoma Commission had established a minimum rate and while its lawfulness was being litigated, paid the state-fixed purchase price under protest. When the United States Supreme Court found Oklahoma's action to have been unlawful and set the state commission order aside, there was no longer even the semblance of a valid law, or lawful order which would modify the contract rate.

> The contract rate, therefore, under the mandate of the Supreme Court must be held to have been the rate effective on June 7, 1954."

A similar holding is found in *Cities Service Gas Co.* v. *Federal Power Commission* (10th CCA), 255 F.2d 860.

If under the Natural Gas Act a gas producer and a distributor may agree to fix the rate, and from time to time to change it, absent any proceeding before the Commission to regulate the rate, why may they not agree that the rate to be paid shall be the contract rate if the rate imposed by a State Commission shall be held invalid? This, in effect, was what the parties here agreed upon.

If so, it seems to us that the claims here are not founded upon any liability *created* by the Natural Gas Act, but upon a private contract deriving its force from state law.

It is certainly true that the adjudication of these claims does entail an examination of the provisions of the Natural Gas Act, the regulations of the Commission, and the applicable federal decisions. But these have been brought into [fol. 67] the cases by way of defense to complaints which, on their face, are based on nothing more than contracts to refund amounts measured by the contract or "filed" rate and the rate fixed by the Kansas order. The general rule is that in such a case the plaintiff's suit is not one arising under federal law. *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 70 S.Ct. 876. Cases involving patents supply familiar examples of this principle. See annotation in 167 ALR p. 1114.

There is no issue here of the reasonableness of the rate, nor any attempt to "adjudicate" a proper rate, as the defendants argue.

We are not cited to any decision of the Supreme Court of the United States authoritatively settling the question before us. There are, however, three decisions of the federal district courts involving suits brought in the state courts to recover excess payments of gas rates made under circumstances similar to those in the cases at bar. In each case the defendants attempted to remove the case to the federal court. In *Cities Service Gas Co.* v. *Skelly Oil Co.*, (D.C.Del. 1958), 165 F.Supp. 31, Judge Layton held that

the suit was not one founded upon the Natural Gas Act, but a contract action based upon letters interchanged by the parties. He added:

> "Now, it is conceded that in order to determine the exact amounts due, as well as other relevant questions, a construction of the Natural Gas Act and of the Commission Rules may have to be resorted to. But as [fol. 68] said in the Winsor case, 'Nor, * * * is the fact that a federal law may or will be drawn into construction during the course of the litigation sufficient to suppose jurisdiction in a federal court.'"

To the same effect is *Northern Natural Gas Co.* v. *Cities Service Oil Co.*, decided by the United States District Court of Iowa, June 30, 1959, and *Pan American Petroleum Corporation* v. *Cities Service Gas Co.*, decided by the District Court of Kansas. (Both opinions are unreported.) In the latter case, as in these cases, the Kansas Corporation Commission price-order had been filed with the Commission. The Court, citing the decision of the Supreme Court respecting the effect of private contracts fixing initial rates, noted that the Commission had taken no action to change the contract rate. The court also held that the Kansas Commission had no power to modify the terms of the original agreement, and further said:

> "In view of these decisions, it is clear that there is no federal question presented relative to the order of the Kansas Corporation Commission raising the contract price to 11¢, and the unilateral rate change by the Federal Power Commission. Since the law is settled, there is no federal question."

Defendants say that these are removal cases, merely directing remand, and therefore not affirmative holdings sustaining the jurisdiction of the state courts. This distinction is not convincing. At the moment, they furnish a persuasive [fol. 69] guide to a state court confronted with a novel question not authoritatively settled by the Supreme Court. We think that we should follow their reasoning.

In support of their contention that the Natural Gas Act creates the liability in the cases before us, defendants cite decisions arising under the Interstate Commerce Act. In view of the decision in the *Mobile* case, we think them inapplicable.

The conclusion that the Natural Gas Act is not inconsistent with private contracts for restitution of overpayments in cases such as those before us finds support in the case of *Natural Gas Pipeline Co.* v. *Harrington* (5th C.C.A., 1957), 246 F.2d 915. That decision sustained an action for restitution of the difference between the contract rate and the price paid by Natural in compliance with an order of the Oklahoma Corporation Commission that was later declared invalid.

The Court said that any price in excess of the contract rate was "contrary to the spirit, if not the letter" of the Natural Gas Act; but it is clear to us that the Court did not hold that liability in such a suit was created by the Act; on the contrary, it clearly recognized the action as one founded on common law principles of restitution.

Defendants say that this case is not in point, because the gas contract and Oklahoma price order had not been filed with the Commission; but the Court of Appeals held [fol. 70] that this failure did not prevent the jurisdiction of the Commission from attaching, and that the contract rate became the only lawful rate until changed by order of the Commission. On the latter point, see also *Interstate Natural Gas Co.* v. *Southern California Gas Co.*, 209 F.2d 380 (9th CCA., 1953).

Defendants point to 4(a) of the Act, and to §154.21 of the Commission's regulations, embodying the requirement for reasonable rates and the prohibition against unreasonable rates. The argument seems to be that these provisions create a liability for repayment of the amounts of excessive charges. This argument is, we think, foreclosed by the decisions in *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 71 S.Ct. 692, and *T.I.M.E. Inc.* v. *United States*, 359 U.S. 464, 79 S.Ct. 904. The latter case involved the Motor Carrier Act of 1935; the former the Natural Gas Act. In the *Montana-Dakota* case the

Court, referring to the statutory requirement of reasonableness, said:

> "But the prescription of the Statute is a standard for the Commission to apply, and independently of Commission action, creates no right which courts may enforce."

This holding was reaffirmed in the *T.I.M.E.* case.

One of the defendants urges that the *T.I.M.E.* case, which holds that there is no common law right of action for unreasonable rates under the Motor Carrier Act, is applicable to the cases before us. Since these actions are based on [fol. 71] private contracts, we do not think that the holding in the T.I.M.E. case applies.

The *Montana-Dakota* case, cited above, is relied on by defendants as authority for the general proposition that "the right to a reasonable rate is the right to the rate which the Commission files or fixes, and that, except for review of the Commission's orders, the courts can assume no right to a different one." In that case the Supreme Court considered a complaint alleging fraud in preventing plaintiff from pursuing before the Federal Power Commission its remedy for a reasonable rate. The case, as we read it, holds that, on an issue of the reasonableness of the rate, the jurisdiction of the Commission is exclusive. But here, as above noted, there is no issue of the reasonableness of the filed rate.

Defendants cite our own decisions refusing in corporate election proceedings to adjudicate claimed violations of the proxy rules of the Securities and Exchange Commission in respect to the solicitation of stock proxies.

Investment Associates Inc. v. *Standard Power & Light Corporation*, 29 Del.Ch. 225, —— A 2d ——, affirmed 29 Del.Ch. 593, —— A 2d ——, was such a case. The Vice Chancellor first held that exclusive jurisdiction to determine the validity of the proxy was vested in the federal courts, and that in any event, because of the need of uniformity in applying the act, the state courts would not entertain such a challenge. The decision was affirmed. It [fol. 72] was later followed in *American Hardware Cor-*

poration v. *Savage Arms Corporation*, —— Del. ——, 136 A 2d 690.

In those cases we were asked to adjudicate a violation of regulations under the Securities act; here we are not asked to adjudicate any violation of the Natural Gas Act, or, in our opinion, to enforce a liability created by that Act.

Defendants argue that Cities had a remedy before the Commission. Cities should, it is said, have attacked directly the filing of the Kansas price order as a part of the rate schedules, as it did in the *Magnolia* case. *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F.2d 860.

The rule requiring the exhaustion of administrative remedies would certainly be applicable to a suit in the federal court attacking the reasonableness of the rate, but we think it inapplicable here, since no attack is made upon the "filed rate", which the federal courts have held to be the gas contract rate.

Defendants say that in any event Cities in attempting to attack collaterally the "filed rate", and that, whether right or wrong, the rate accepted for filing by the Commission, including the Kansas order, is the effective filed rate, and Cities is bound by it until it succeeds in having the Commission change it.

[fol. 73] The difficulty with this argument is, once again, that the federal courts have authoritatively held that the Kansas price-fixing order was void *ab initio* because the Natural Gas Act had pre-empted the field. Being void the unilateral filing of the order as part of the rate schedules was a nullity. This is not our adjudication; it is the adjudication of the federal courts.

Defendants cite *Federal Power Commission* v. *Interstate Natural Gas Co.*, 336 U.S. 577, —— S.Ct.——, as holding that claims for refunds from regulated gas companies are determinable solely with reference to federal law. The case concerned a fund accumulated during litigation over Interstate's rates, which had been reduced by order of the Commission. The issue was whether the fund should go solely to four pipeline companies or (at least in part) to their customers who were the ultimate consumers of the gas. The Supreme Court held that the distribution of the fund was

governed by federal law and that the lower federal courts should determine the distribution between those entitled. The case does not seem to us to touch the point before us.

It is true that if Cities should recover the money for which it sues the distribution of the fund would be subject to the orders of the Federal Power Commission. See 15 F.P.C. 1448, 1453. But we do not understand the defendants to contend that the Commission is vested with power to en- [fol. 74] force refund contracts of the kind here sued on.

Defendants seek to build an argument upon the general proposition that the Natural Gas Act leaves no room for common law obligations to do that which the Act itself requires.

This argument seems to us to assume the very point in issue, that is whether the Act itself creates the liability here sued on. This is the basic question in the case.

One final observation must be made. A great deal of argument in the defendants' briefs is directed to an attempted limitation of the issues before the Superior Court and the issues before this Court. Most of this argument seems to us to miss the point. The substantial question which emerges, in one form or another, is whether the state courts have jurisdiction to entertain the suits on the refund contracts.

For the reasons above stated, we are of opinion that such jurisdiction exists.

The petition for a writ of prohibition is denied.

[fol. 75]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 69, 1959

COLUMBIAN FUEL CORPORATION, a Delaware corporation, et al., Petitioners,

—v.—

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, et al., Respondents,

and

CITIES SERVICE GAS COMPANY, a Delaware corporation, Intervening Respondent.

FINAL JUDGMENT—March 18, 1960

This 18th day of March, 1960,

This Court having filed its opinion, dated February 25, 1960, on the petition for a writ of prohibition herein, and petitioners having filed a motion, dated March 4, 1960, asking that the operation, execution, and enforcement of its judgment on that opinion be stayed in order to permit application for a writ of certiorari to be made to the Supreme Court of the United States,

It Is Hereby Ordered and Adjudged:

1. That the petition for a writ of prohibition is dismissed;

2. That the stay of all further proceedings in the Superior Court of the State of Delaware in and for New Castle County, in Civil Actions 670, 671, 708 and 722, 1958, contained in the order of this Court herein dated November 17, 1959, is vacated;

[fol. 76] 3. That the clerk of this Court shall return to the Prothonotary of the Superior Court of the State of Delaware in and for New Castle County the original records in Civil Actions 670, 671, 708 and 722, 1958, in that Superior Court, together with a certified copy of this order; and,

4. That the operation, execution and enforcement of paragraphs 1, 2, and 3 hereof are stayed in their entirety for a period of thirty days from the date hereof; and, as to any of the petitioners which shall have applied to the Supreme Court of the United States for a writ of certiorari herein within that time, the operation, execution and enforcement of those paragraphs are further stayed in their entirety as to those petitioners until the entry of a final order of the Supreme Court of the United States in any certiorari proceedings.

C. Southerland, Chief Justice; Daniel F. Wolcott, Justice; Howard W. Bramhall, Justice.

Approved as to form:

Andrew B. Kilpatrick, Jr., Attorney for petitioners.

[fol. 77] [File endorsement omitted]

[fol. 78]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

Civil Action No. 69, 1959

COLUMBIAN FUEL CORPORATION, a Delaware corporation, TEXACO, INC., a Delaware corporation, and PAN AMERICAN PETROLEUM CORPORATION, a Delaware corporation, Petitioners,

—v.—

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and the HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, Respondents,

and

CITIES SERVICE GAS COMPANY, a Delaware corporation, Intervening Respondent.

ORDER EXTENDING STAY—April 14, 1960

And Now to Wit this 14th day of April, 1960, upon the motion of the petitioners,

It Is Ordered that the stay of proceedings below as incorporated in the final judgment entered by this court on March 18, 1960, be, and it is hereby, extended until the further order of the court.

Daniel F. Wolcott

[fol. 79] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 80]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

Civil Action No. 69, 1959

COLUMBIAN FUEL CORPORATION, a Delaware corporation, TEXACO, INC., a Delaware corporation, and PAN AMERICAN PETROLEUM CORPORATION, a Delaware corporation, Petitioners,

—v.—

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and the HONORABLE ANDREW D. CHRISTIE, sitting as a judge of that court, Respondents,

—and—

CITIES SERVICE GAS COMPANY, a Delaware corporation, Intervening Respondent.

ORDER TO CERTIFY THE RECORD—April 19, 1960

Now, to Wit, this 19th day of April, 1960, upon motion of the petitioners,

It Is Ordered, that the Clerk of the Supreme Court of Delaware shall certify the record of this court and the records of the Superior Court in each of the Superior Court cases to which this prohibition proceeding relates and shall transmit each of these records to the Clerk of the Supreme Court of the United States, accompanying a Petition for Writ of Certiorari, at such date as is designated for such transmittal by the attorney for the petitioner or petitioners who shall first file such a request;

And Further Ordered that the Supreme Court of the United States is hereby requested to remand the said records to the Clerk of this Court upon the conclusion of [fol. 81] the proceedings in the United States Supreme Court.

Daniel F. Wolcott, Justice.

Approved this 19th day of April, 1960.

Howard L. Williams, Bank of Delaware Building, Wilmington, Delaware, Attorney for Intervening Respondent.

[fol. 82] [File endorsement omitted]

[fol. 83]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

Civil Action No. 69, 1959

COLUMBIAN FUEL CORPORATION, a Delaware corporation, TEXACO, INC., a Delaware corporation, and PAN AMERICAN PETROLEUM CORPORATION, a Delaware corporation, Petitioners,

—v.—

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and the HONORABLE ANDREW D. CHRISTIE, sitting as a judge of that court, Respondents,

—and—

CITIES SERVICE GAS COMPANY, a Delaware corporation, Intervening Respondent.

ORDER EXTENDING STAY—April 19, 1960

Now, to Wit, this 19th day of April, 1960, upon motion of the petitioners,

It Is Ordered, that the stay of proceedings below as incorporated in the final judgment entered by this court on March 18, 1960, and subsequently extended, be, and it is hereby, further extended until and including the 9th day of May, 1960.

Daniel F. Wolcott, Justice.

Approved as to Form this 19th day of April, 1960.

Howard L. Williams, Bank of Delaware Building, Wilmington, Delaware, Attorney for the Intervening Respondent.

[fol. 84] [File endorsement omitted]

[fol. 85] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 86]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

No. 671

CITIES SERVICE GAS COMPANY, a Corporation, Plaintiff,

—vs.—

THE TEXACO COMPANY, a Corporation, Defendant.

COMPLAINT—Filed June 16, 1959

Comes now plaintiff Cities Service Gas Company and for its cause of action against defendant The Texas Company states:

1. Plaintiff is a citizen and a resident of the State of Delaware, it being a corporation duly organized and existing under the laws of that state.

2. Defendant is a citizen and a resident of the State of Delaware, it being a corporation duly organized and existing under the laws of that state.

3. Plaintiff and defendant entered into the following contracts covering the purchase by plaintiff and the sale by defendant of natural gas produced in the Kansas-Hugoton Field in the State of Kansas, namely:

(A)—Contract dated June 16, 1949, under which gas deliveries began on September 6, 1949, and wherein Columbian Fuel Corporation and defendant are jointly designated "Seller", providing, among other things, for:

(1) the sale and delivery by Seller to plaintiff, at the wellhead of all gas produced from certain therein described lands;

(2) a term of ten years from first gas delivery and thereafter for successive annual periods, providing

either party may cancel at or after the expiration of the 10-year period;

(3) the payment by plaintiff to Seller for gas delivered during the first 5 years after first delivery at 7¢ per Mcf, and thereafter in the event the weighted average price paid by plaintiff to others for gas produced in such field should exceed 7¢, then the price would be increased to the weighted average price while so paid, provided such prices shall be decreased, on a monthly basis, proportionately to the deficiency in the gross heating value of the gas below 1,000 British Thermal Units per cubic foot; and

(4) the measurement of all gas on a pressure base of 16.4 psia, assumed and agreed to obey Boyle's Law.

[fol. 87] (B)—Letter dated December 17, 1951, from defendant to plaintiff providing, subject to revocation at any time, defendant sold to plaintiff defendant's undivided 25% interest in gas produced from Hacker-Engel Unit, Section 1-34S-34W, and Shorb-Engel Unit, Section 12-34S-34W, Seward County, Kansas, in accordance with the price terms of a gas purchase contract between Sunflower Natural Gas Company, Inc. and plaintiff dated January 10, 1950, which contract is referred to in said letter as being dated March 8, 1950. The Sunflower contract provides, among other things, for:

(1) the sale and delivery of gas at the wellhead;

(2) the payment by plaintiff to Sunflower of 9¢ per Mcf through June 22, 1956, and 10¢ per Mcf from June 23, 1956 to June 22, 1962, inclusive, and thereafter an adjustment of price for each 6-year period, provided such prices shall be decreased, on a monthly basis, proportionately to the deficiency in the gross heating value of gas below 960 BTU's per cubic foot; and

(3) the measurement of gas at a pressure base of 16.4 16.4 psia assumed and agreed to obey Boyle's Law.

(C)—Letter dated December 20, 1951, from defendant to plaintiff providing, subject to revocation at any

Finney County, Kansas, for a judicial review of the said Order.

"Pending final judicial determination of the said Order and beginning January 1, 1954, Cities Service Gas Company intends to pay for all gas purchased by it in the Kansas-Hugoton Field in strict compliance with the terms and conditions of the said Order: Such compliance with said Order by this Company, however, is made to avoid the penalties and actions provided by the Kansas statutes for a violation thereof, and the payments made to you in compliance with said Order pending its final judicial determination are to be considered and accepted by you as involuntary payment on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said Order.

"In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments."

Subject to and in accordance with such Refund Letter, plaintiff monthly issued a voucher check to defendant covering each monthly volume of gas purchased by plaintiff from defendant under such purchase contracts, subsequent to the effective date of such order and until January 23, 1957. Each such voucher check contained the following statement:

"In full settlement of gas purchased for the period ending (appropriate date here inserted on each check), subject to the provisions of letters dated August 25, 1953 and January 21, 1954, with reference to gas purchased in Kansas."

The letter of August 25, 1953 referred to in the foregoing statement is not material herein.

Defendant endorsed each such voucher check and received and retained the benefits thereof,—all without protest.

6. The United States Supreme Court on January 20, 1958, in the case of Cities Service Gas Company v. State Corporation Commission, State of Kansas, 355 U.S. 391, 2 L.Ed. 355, finally judicially determined that such Order was invalid and beyond the jurisdiction of such Commission.

7. The overpayments plaintiff has made to defendant, being the difference between the price provided to be paid for gas purchased by plaintiff from defendant under each of the above mentioned purchase contracts and the price of gas at 11¢ per Mcf measured on a pressure base of 14.65 psia, as required by such order for the period January 1, 1954–December 22, 1957, both inclusive, are as follows:

[fol. 90]

Columbian Contract	—	$399,667.90
Sunflower Contract	—	7,526.89
Western Contract	—	5,761.16

aggregating the principal sum of $412,955.95.

8. Plaintiff has made demand upon defendant for the refund to plaintiff of the overpayment by plaintiff of the respective amount under each such purchase contract, as aforesaid, but defendant has failed, neglected and refused to make refund of such overpayments, or any part thereof, to plaintiff, and as a result defendant is indebted to plaintiff in the principal aggregate sum of $412,955.95.

9. To avoid the criminal sanctions imposed by the Kansas Statutes for the violation of such Price Order, plaintiff made the above described overpayments to defendant involuntarily, under protest and under the compulsion of such Price Order and upon condition that defendant would promptly refund to plaintiff such overpayments if such Price Order should be finally judicially determined to be invalid, as stated in said Refund-Letter.

10. By reason of the facts hereinabove stated, defendant has become obligated and indebted to plaintiff as follows:

9. Denied.

10. Denied.

(a) Denied. Plaintiff made no over-payments to defendant. No contract was made or subsists obligating defendant to make refunds to plaintiff: defendant did not assent to make any refunds to plaintiff, and there was no consideration for any alleged contract by defendant to make refunds to plaintiff. A contract by defendant to make refunds to plaintiff would have been unenforceable under the statute of frauds of Delaware, and the statutes of frauds of such other jurisdictions as might be applicable, inasmuch as such an agreement would have constituted a modification or part of a contract for the sale of goods of the required value.

[fol. 101] (b)-(c) Denied. Plaintiff is not entitled to restitution, and defendant was not unjustly enriched because of the payments made by plaintiff to defendant for gas from the Kansas-Hugoton Field. Plaintiff itself acquiesced in the prices paid defendant for gas from the Kansas-Hugoton Field and is also estopped to assert that it is entitled to any refund of all or a portion of those payments.

SECOND DEFENSE

Defendant here incorporates the allegations of paragraph 4 of the First Defense.

THIRD DEFENSE

Defendant here incorporates the allegations of paragraphs 10(a) and (b)-(c) of the First Defense.

FOURTH DEFENSE

All payments by plaintiff to defendant for sales referred to in the complaint accorded with the minimum price for those sales required by the 11¢ Minimum Price Order of the Kansas State Corporation Commission which was and at all times has remained in full force and effect with respect to those sales and with the 14.65 p.s.i.a. pressure base for determining the quantity of those sales as required by

the July 1, 1953, Pressure Base Order of the Kansas State Corporation Commission, which at the times those sales were made was, and still is in full force and effect.

Fifth Defense

All payments by plaintiff to defendant referred to in the complaint for sales prior to July 16, 1954, accorded with [fol. 102] the minimum price for those sales required by the 11¢ Minimum Price Order of the Kansas State Corporation Commission, which was and at all times has remained in full force and effect with respect to those sales and with the 14.65 p.s.i.a. pressure base for determining the quantity of those sales as required by the July 1, 1953, Pressure Base Order of the Kansas State Corporation Commission, which at the times of those sales was, and still is, in full force and effect.

Defendant here incorporates the allegations of paragraph 6 of the First Defense. The lawfulness of all payments by plaintiff to defendant referred to in the complaint for sales made after June 7, 1954, was controlled exclusively by rates filed with and accepted by the Federal Power Commission pursuant to the rules and regulations promulgated by it under the Natural Gas Act with respect to independent producers, and plaintiff does not base its claim upon those rates. The payments required to be made at the 11¢ filed and accepted rate were the same as those required to be made for sales referred to in the complaint that occurred prior to June 7, 1954.

Sixth Defense

And for a further alternative defense to the complaint, defendant alleges that a large part of all the gas referred to in the complaint—the exact amount being known to the plaintiff only—was gas destined never to leave the State of Kansas, but, to be sold and ultimately consumed in intrastate commerce, rather than in interstate commerce, as to [fol. 103] all of which the Minimum Price and Standard Pressure Base Orders of the Kansas State Corporation Commission, referred to in the complaint and elsewhere in this answer, always were and have remained in full force and effect.

time, defendant sold to plaintiff defendant's undivided 25% interest in gas produced from Loewen Unit, Section 29-29S-28W, Grant County, Kansas, in accordance with the price terms of gas purchase contract between Western Natural Gas Company and plaintiff dated September 29, 1949. The Western Contract provides, among other things, for:

(1) the sale and delivery of gas at the wellhead;

(2) the payment by plaintiff to Western of 8¢ per thousand cubic feet, provided such price shall be decreased proportionately to the deficiency in the gross heating value of gas, on a per well and monthly basis, below 975 BTU's per cubic foot; and

(3) the measurement of gas at a pressure base if 16.4 psia corrected for deviation from Boyle's Law.

4. On December 2, 1953, the State Corporation Commission, State of Kansas, entered its Order in Docket No. 40,079-C (C-3216), effective January 1, 1954, providing that all parties taking gas from the Hugoton Gas Field in Kansas shall pay or attribute to such gas a price of not less than 11¢ per Mcf measured at 14.65 psia at the wellhead. A true and correct copy of such Price Order, marked Exhibit "A", is attached hereto and made a part hereof.

The effect of such Order, if valid, was to increase the cost to plaintiff for gas purchased under such contracts, as follows:

[fol. 88] *Columbian Contract*

(a) When measured on the contract base of 16.4 psia:

(1) gas having a BTU content of 975 or more was increased from an average of 8.0¢ to 12.61¢; and

(2) gas having a BTU content of less than 975 was increased from less than 8.0¢ to 12.61¢.

(b) When measured on the pressure base of 14.65 psia as required by such Order:

(1) gas having a BTU content of 975 or more was increased from 6.976¢ to 11¢; and

(2) gas having a BTU content of less than 975 was increased from less than 6.976¢ to 11¢.

Sunflower Contract

When measured on the contract pressure base of 16.4 psia the price was increased from 9¢ to 12.6¢ and when measured on the pressure base of 14.65 psia, as required by such order, the price was increased from 7.86¢ to 11¢.

Western Contract

When measured on the contract base of 16.4 psia deviated, the price was increased from 8¢ to 12.314¢ and when measured on the pressure base of 14.65 psia, as required by such order, the price was increased from 7.146¢ to 11¢.

Such Order, if valid, imposed criminal sanctions for its violation, as provided in Secs. 55-708, 709, and 710, General Statutes of Kansas, 1949. Each such Kansas Statute is set out verbatim as Exhibit "B" attached hereto and made a part hereof.

5. Thereafter, on January 21, 1954, and before payment was made for gas produced on and after January 1, 1954, the effective date of such Order, plaintiff wrote defendant the following letter (Refund Letter) which, omitting date, salutation, closing and signature, reads:

"The State Corporation Commission of the State of Kansas by Order dated December 2, 1953, in Docket No. 44079-C (C-3216) directed that on and after January 1, 1954, as a condition precedent for withdrawal of gas from the Hugoton Gas Field in Kansas, there shall be paid therefor or attributed thereto, at the wellhead, a minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a).

"Cities Service Gas Company and certain other par- [fol. 89] ties filed Petitions in the District Court of

(a) The payment by plaintiff to defendant of such overpayments, as aforesaid, subject to and in accordance with such Refund Letter, the endorsement by defendant of each such voucher check issued by plaintiff and accepted by defendant subject to such Refund Letter and the receipt and retention by defendant of the benefits of all such overpayments without protest, created and made a valid contract between plaintiff and defendant whereby defendant agreed with plaintiff that if and upon the final judicial determination of the invalidity of such order, defendant would refund to plaintiff all such overpayments. Upon the determination of the invalidity of such order by the United States Supreme Court, as aforesaid, defendant therefore became obligated under such contract to refund to plaintiff such overpayments aggregating the sum of $412,955.95, together with interest at 6% per annum from the date of each such overpayment; or

(b) By reason of the promulgation of such order and the liabilities and criminal sanctions imposed by the [fol. 91] Kansas Statutes for the violation of such order, plaintiff has been required under the compulsion of such order involuntarily to make such overpayments to defendant. Upon the final judicial determination of the invalidity of such order by the United States Supreme Court, defendant became and is legally and equitably obligated to restore and make restitution to plaintiff of such overpayments in the aforesaid aggregate amount of $412,955.95, with interest thereon at 6% per annum from the date of each such overpayment; or

(c) By reason of the receipt and retention by defendant of such overpayments, involuntarily paid by plaintiff under and by the compulsion of such order, defendant has been unjustly enriched in the aforesaid aggregate sum of such overpayments, and defendant thereby became and is legally and equitably obligated to restore and repay such overpayments to plaintiff in the aggregate sum of $412,955.95 with interest thereon at 6% per annum from the date of such overpayments.

Wherefore, plaintiff demands judgment against defendant for the principal sum of $412,955.95, with interest thereon at 6% per annum from the date of such overpayment and for all other relief to which plaintiff may be entitled in the premises and for costs of this action.

J. J. Morris, Jr. and H. L. Williams, of Morris, James, Hitchens & Williams, Delaware Trust Building, Wilmington, Delaware, Attorneys for Plaintiff.

Conrad C. Mount, O. R. Stites, Joe Rolston, Gordon J. Quilter, R. R. McCracken, of Counsel for Plaintiff, Cities Service Gas Company, First National Building, Oklahoma City, Oklahoma.

[fol. 92] [File endorsement omitted]

[fol. 93]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—v.—

THE TEXAS COMPANY, a corporation, Defendant.

ANSWER—Filed August 18, 1958

FIRST DEFENSE

Defendant responds to the respective numbered paragraphs of the complaint as follows:

1. Admitted.

2. Admitted.

3. Denied, except admitted that plaintiff and defendant entered into three contracts covering the purchase by plaintiff and the sale by defendant, in both intrastate and inter-

state commerce for resale by plaintiff for ultimate public consumption, of certain quantities of natural gas produced in the Kansas-Hugoton Field in the State of Kansas, but as to each contract defendant answers separately as follows:

(A) Denied, except: admitted that the basic agreement under what is referred to in the complaint as the "Columbian Contract" is dated June 16, 1949; admitted that gas deliveries commenced thereunder on August 30, 1949, not on September 6, 1949, as alleged in the complaint; admitted that Columbian Fuel Corporation and defendant are therein jointly and severally designated "Seller"; and that [fol. 94] the allegations characterizing and summarizing what that contract otherwise provided are admitted only in so far as they correspond to the actual terms of that contract which, together with the letter amendment dated September 8, 1949, but exclusive of all other amendments and modifications, is attached hereto as Exhibit "A" and incorporated herein.

(B) Denied, except: admitted that the basic agreement, which, in turn, is based in part on the contract referred to in the complaint as the "Sunflower Contract", is a letter from defendant to plaintiff dated December 17, 1951; admitted that therein defendant, "subject to revocation at any time," granted plaintiff "authority to make payment for The Texas Company's [defendant's] share of gas purchased from" defendant's undivided 25% working interest in the Hacker-Engel Unit and its undivided 50% working interest in the Shorb-Engel Unit of the Kansas-Hugoton Field "in accordance with the price terms of" a Gas Purchase Contract dated January 10, 1950, between Sunflower Natural Gas Company, Inc., and plaintiff; and that the allegations characterizing and summarizing what that contract otherwise provided are admitted only in so far as they correspond to the actual terms of that contract. The letter from defendant to plaintiff dated December 17, 1951, is attached hereto as Exhibit "B", the Gas Purchase Contract dated January 10, 1950, between Sunflower Natural Gas Company, Inc. and Cities Service Gas Company, is attached hereto as Exhibit "C", and both are incorporated herein.

(C) Denied, except: admitted that the basic agreement, which, in turn, is based in part on the contract referred to in the complaint as the "Western Contract", is a letter from [fol. 95] defendant to plaintiff dated December 20, 1951; admitted that therein defendant, "subject to revocation at any time," granted plaintiff "authority to make payment for The Texas Company's [defendant's] share of gas purchased from" defendant's undivided 25% working interest in the Loewen Unit of the Kansas-Hugoton Field "in accordance with the price terms of" a Gas Purchase Contract, dated September 29, 1949, between Western Natural Gas Company and plaintiff; and that the allegations characterizing and summarizing what that contract otherwise provided are admitted only in so far as they correspond to the actual terms of that contract. The letter from defendant to plaintiff dated December 20, 1951, is attached hereto as Exhibit "D", the Gas Purchase Contract dated September 29, 1949, between Western Natural Gas Company and Cities Service Gas Company is attached hereto as Exhibit "E", and both are incorporated herein.

4. Denied, except: admitted that on December 2, 1953, the State Corporation Commission, State of Kansas, entered its Price Order in Docket No. 44,079-C (C-3216), effective January 1, 1954, providing that all parties taking gas from the Hugoton Gas Field in Kansas shall pay or attribute to such gas a price of not less than 11¢ per Mcf measured at 14.65 p.s.i.a at the wellhead, a true and correct copy of which is attached to the complaint as Exhibit "A"; and admitted that if this Price Order of the Kansas State Corporation Commission was valid, sanctions for its violation were provided by §§ 55-708, 709 and 710, General Statutes of Kansas, 1949, which are set out verbatim in Exhibit "B" attached to the complaint. This Price Order of the [fol. 96] Kansas State Corporation Commission entitled defendant, during the period covered by the complaint, to the price of 11¢ per Mcf measured at 14.65 p.s.i.a. for all natural gas from the Kansas-Hugoton Field sold and delivered by it to plaintiff.

Throughout the period covered by the complaint, the price paid by plaintiff to all producers for natural gas from the Kansas-Hugoton Field was 11¢ per Mcf measured

at 14.65 p.s.i.a. Paragraph 6 of the "Columbian Contract" between plaintiff and defendant specified:

> "In the event the weighted average price paid by Cities to producers other than Seller, for gas produced in the Kansas-Hugoton Field exceeds the price to be paid to Seller under the provisions hereof, the price herein shall be increased to such weighted average price while so paid; . . . "

This provision of the "Columbian Contract" also entitled defendant, during the period covered by the complaint, to the price of 11¢ per Mcf at 14.65 p.s.i.a. for all natural gas delivered by it to plaintiff pursuant to that contract. If defendant had not been entitled during that period to the price of 11¢ per Mcf at 14.65 p.s.i.a. for all natural gas delivered by it to plaintiff pursuant to the "Columbian Contract," defendant would have been entitled during that period to some other "weighted average price," computed under paragraph 6 of the "Columbian Contract," for all natural gas delivered by it to plaintiff pursuant to that contract, but defendant is without knowledge or information sufficient to form a belief as to what, under those circumstances, that "weighted average price" would have been.

If defendant had not been entitled, during the period covered by the complaint, to the price of 11¢ per Mcf at 14.65 p.s.i.a. for all natural gas sold and delivered by it [fol. 97] to plaintiff pursuant to its said contracts, a Pressure Base Order of the Kansas State Corporation Commission and correspondence of plaintiff relating thereto would have entitled defendant, during that period: to the "weighted average price" referred to herein, computed on a pressure base of 14.65 p.s.i.a., for deliveries pursuant to the "Columbian Contract"; to a price of 9¢ per Mcf at 14.65 p.s.i.a., or 10.25¢ per Mcf at 16.4 p.s.i.a., for all deliveries pursuant to the contract based on the "Sunflower Contract" up to June 23, 1956, and to a price of 10¢ per Mcf at 14.65 p.s.i.a., or 11.4¢ per Mcf at 14.65 p.s.i.a., for all deliveries pursuant to the contract based on the "Sunflower Contract" on and after June 23, 1956; and to a price of 8¢ per Mcf at 14.65 p.s.i.a., or 8.95¢ per Mcf at 16.4 p.s.i.a., for all de-

liveries pursuant to the contract based on the "Western Contract."

Prior to January 1, 1954, the Kansas State Corporation Commission, in its Docket No. 34,780-C (C-1825), issued a Pressure Base Order effective as of July 1, 1953, which is attached hereto as Exhibit "F". It states in part:

> "Gas, Cubic Foot, shall mean the volume of gas contained in one cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit. Whenever the conditions of pressure and temperature differ from the above standard, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the Ideal Gas Laws corrected for deviation."

On or about July 17, 1953, plaintiff wrote defendant a letter concerning that Pressure Base Order which stated in part:

> [fol. 98] "You perhaps know that the Corporation Commission of Kansas has issued an order, effective July 1, 1953, which purports to establish a measurement base for natural gas different from that set forth in our subsisting gas purchase contract.
>
> " . . . [T]his Company together with certain other companies similarly situated have instituted independent actions against the Commission in the District Court of Shawnee County, Kansas, seeking judicial determination of the validity, meaning, effect and applicability of said order as it may apply to our purchases of gas in Kansas.
>
> "Pending the final judicial interpretation of said order, either in the litigation above referred to or other possible litigation that has been instituted with reference to such order, we propose currently to make payment for gas at the price and upon the pressure base provided in said contracts. When the next such pay-

ment is made you will be advised that the same is made to and accepted by you without prejudice to the rights of either of us pending the hearing and final determination of such litigation. After final determination of the matter, if we have either underpaid or overpaid you for any gas so purchased, then it is understood that proper adjustment therefor shall be promptly made, without interest, by the party legally obligated so to do."

Thereafter, on August 25, 1953, when forwarding to defendant a check for certain natural gas sold and delivered pursuant to the aforesaid contracts, plaintiff again wrote defendant a letter about that Pressure Base Order, stating therein:

"This payment is made to and accepted by you and future payments under said contract are to be made to and accepted by you without prejudice to the rights of either of us as outlined in our letter to you of July 17, 1953, pending the hearing and final determination of the litigation referred to in said letter."

Plaintiff wrote on the monthly voucher checks issued by it to defendant for natural gas delivered to it pursuant to these contracts and during the period covered by the complaint that they were to be taken "subject to the provisions of" that letter of August 25, 1953. Plaintiff and the others referred to in the above letter of July 17, 1953, were ultimately unsuccessful in the litigation instituted by them concerning the validity and scope of the Pressure Base [fol. 99] Order, and that Order has at all times remainds, (sic) and is now, in full force and effect. That Pressure Base Order of the Kansas State Corporation Commission and plaintiff's agreement to make, under these circumstances, adjustments in its payments in accordance therewith would, in any event, have entitled defendant to a price for the natural gas from the Kansas-Hugoton Field sold and delivered by it to plaintiff, during the period covered by the complaint, computed on a pressure base of 14.65 p.s.i.a.

5. Denied, except admitted that on or about January 21, 1954, and before payment was made for gas produced on

and after January 1, 1954, the effective date of the Price Order of the Kansas State Corporation Commission, plaintiff wrote defendant the letter which is quoted in part in paragraph "5" of the complaint; that plaintiff monthly issued a voucher check to defendant covering each monthly volume of gas from the Kansas-Hugoton Field purchased by plaintiff from defendant subsequent to the effective date of such Price Order and until January 23, 1957, each containing the statement quoted in paragraph "5" of the complaint; and that defendant endorsed each such voucher check and received the benefits thereof.

6. Denied, except admitted that, on January 20, 1958, the United States Supreme Court, in the case of *Cities Service Gas Company* v. *State Corporation Commission, State of Kansas*, 355 U.S. 391, 2 L.Ed. 355, reversed the judgment of the Supreme Court of Kansas reported at 180 Kan. 454, 304 P.2d 528.

As of June 7, 1954, defendant was determined by the Federal Power Commission, with respect to such sales as are referred to in the complaint, to be a natural gas company within the meaning of the Natural Gas Act (15 U.S.C., § 717(a), et seq.), engaged as an independent producer in making such sales.

[fol. 100] In compliance with the pertinent rules and regulations of the Federal Power Commission, defendant established as its initial regulatory rate, as of June 7, 1954, under the Natural Gas Act, the rate of 11¢ per Mcf, measured at 14.65 p.s.i.a., for the sales of the natural gas referred to in the complaint, which lawful effective rate has never been decreased.

Although defendant gave plaintiff prompt notice of the filing of its rate schedules and its application for certificates of public convenience and necessity, and of the dates of acceptance of said rates for filing, authorizing such sales, as well as of the dates of issuance of said certificates, plaintiff never contested, protested or objected to the said 11¢ filed rate in the manner and form prescribed by law.

7. Denied.

8. Denied, except admitted that plaintiff demanded from defendant the respective amounts referred to and that defendant declined to pay them.

SEVENTH DEFENSE

Claims for all or a portion of the payments made by plaintiff to defendant referred to in the complaint are barred by the statute of limitations of Delaware and the statutes of limitations of such other jurisdictions as might be applicable.

Morris, Nichols, Arsht & Tunnell, James M. Tunnell, Jr., Andrew B. Kirkpatrick, Jr., Attorneys for Defendant, 3000 duPont Building, Wilmington, Delaware.

Of Counsel: Paul F. Schlicher, 24th Floor Chrysler Bldg., 135 East 42nd Street, New York, New York.

August 18, 1958

[fol. 104]

EXHIBIT A TO ANSWER

[Emblem]

CITIES SERVICE GAS COMPANY

FIRST NATIONAL BUILDING

OKLAHOMA CITY, OKLAHOMA

September 8, 1949

The Texas Company
P. O. Box 2420
Tulsa 2, Oklahoma
Attention: M. J. Heald, Division Manager
and
Columbian Fuel Corporation
41 East 42nd Street
New York 17, N. Y.
Attention: R. A. Putnam, Contract Supervisor

Gentlemen:

Under date of June 16, 1949, your companies entered into a certain gas purchase contract with us (wellhead form) covering your sale and our purchase of gas from wells on

sixteen (16) sections of land in the Moscow and Pleasant Valley Blocks, Stevens County, Kansas.

We understand that you now wish to amend said contract to include gas produced from Section 14-34S-35I., Stevens County, Kansas, in which The Texas Company owns a 91% interest and Columbian Fuel Corporation owns a 9% interest in and to the gas rights.

We are willing to amend said gas purchase contract to include said Section 11 and ask that two (2) copies of this letter be executed for each of your companies and returned to us, whereupon said gas purchase contract will be deemed amended to include said Section 11.

Yours very truly,

/s/ Geo. H. Baird
Vice President

Geo. H. Baird/d

Amendment Agreed To:

The Texas Company

By .....
Attorney in Fact

Amendment Agreed To:

Columbian Fuel Corporation

By /s/ C. E. Kayser
President

[fol. 105] GAS PURCHASE CONTRACT
(Wellhead Form) GP-734

This contract made and entered into this 16th day of June, 1949, by and between The Texas Company, a Delaware corporation having offices in Tulsa, Oklahoma, and Columbian Fuel Corporation, a Delaware corporation having offices in New York, N. Y., hereinafter referred to jointly and severally as Seller, and Cities Service Gas

COMPANY, a Delaware corporation having offices in Oklahoma City, Oklahoma, hereinafter referred to as Cities.

WITNESSETH:

WHEREAS, Seller is the owner of the gas rights by virtue of valid oil and gas leases covering all of Sections Twenty-seven (27) to Thirty-four (34), inclusive, Township Thirty-one (31) South, Range Thirty-six (36) West, Stevens County, Kansas, known to the parties hereto as the "Moscow Block;" and covering all of Section One (1) to Five (5), inclusive, in Township Thirty-four (34) South, Range Thirty-five (35) West, and all of Sections Thirty-three (33), Thirty-four (34) and Thirty-five (35), in Township Thirty-three (33) South, Range Thirty-five (35) West, known to the parties hereto as Seller's "Pleasant Valley Block," all in Stevens County, Kansas, containing a total of ten-thousand two-hundred-forty (10,240) Acres, more or less; and,

WHEREAS, Seller is desirous of developing its said leases for gas production and of obtaining a market for such gas as may be legally produced therefrom, and Seller is willing to contract gas produced from them, except casinghead gas, to Cities in order to justify its construction of pipelines necessary to gather gas from Seller's wells to be drilled on said leases; and,

WHEREAS, Cities contemplates the construction of a large size pipeline to extend eventually from its Hugoton compressor station located in Section Three (3), Township Twenty-nine (29) South, Range Thirty-five (35) West, Grant County, in a southerly direction approximately thirty (30) miles to the vicinity of Cities' Stevens County, Kansas, block of leases located in Township Thirty-four (34) South, Range Thirty-five (35) West, and said pipeline will be located near to Seller's said leases; all at Cities own cost, risk and expense; and

WHEREAS, Cities has also made arrangements for the temporary local sale to a third party and for the later exchange of gas produced in the Kansas-Hugoton Field and can dispose of gas purchased from Seller hereunder pending

[fol. 106] final construction of Cities' said pipeline to its Stevens County block from its said compressor station; and

WHEREAS, Cities is in the business of selling natural gas at wholesale to chosen customers and to distributors thereof and is desirous of obtaining additional supplies of such merchantable gas to meet its requirements.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Seller and Cities have agreed each with the other as follows:

1. Cities contemplates the eventual construction of a pipeline of large diameter from its said Hugoton compressor station in a southerly direction to a point located within or near to Township Thirty-four (34) South, Range Thirty-five (35) West, Stevens County, Kansas, for the transportation of gas to be produced from Seller's said leases, among others, to its Grant County, Kansas to Kansas City twenty-six (26) inch main trunk line, and pending the construction of said pipeline Cities agrees to construct gathering lines to receive and market gas from Seller's wells and Cities will have said gathering lines completed and ready for operation with Seller's then completed wells connected thereto not later than August 1, 1949.

2. Each one of Seller's said leases is accurately described in detail on a list attached hereto marked Exhibit "A" and made a part hereof, showing Seller's lease number, the number of acres contained in each one, and the expiration date of each such tract, whether Seller's gas rights are owned by virtue of a valid oil and gas lease, a lease covering the gas rights only, by mineral deed or lands owned in fee.

3. Seller represents that it is the owner or operator of the gas rights under gas leases, oil and gas leases or mineral rights covering the lands specified in the attached Exhibit "A". Seller agrees, and covenants that it will, at its own cost, risk and expense drill a gas well on each of the units including such leases to a depth sufficient to test the present known gas-bearing formations in this immediate area and Seller will carry on such drilling until Seller may encounter a situation where, in the Seller's opinion, it would not be

prudent for the Seller to drill a well on one or more of the units including such leases.

4. For the purpose of properly measuring the gas to be sold and delivered hereunder by Seller to Cities, Cities [fol. 107] agrees to so install, operate and maintain metering equipment of suitable size and design at a suitable location on each drilling unit upon which Seller has completed a commercial gas well. Cities is hereby given easement by Seller for the installation, operation and maintenance of such metering equipment together with the necessary pipeline to the gas well on each drilling unit on any of Seller's such owned lands, insofar as Seller has legal right to grant such easements and Cities is hereby granted the right of removing its such equipment within a reasonable time after the expiration or cancellation hereof. Seller shall have the right to inspect said metering equipment in the presence of representatives of Cities and to require tests thereof and to witness same, but in no event shall Seller have the right to alter or in any manner disturb, manipulate or tamper with any of Cities' such equipment. Cities shall test the metering equipment installed for the purpose of measuring gas delivered hereunder at least once each month or oftener if deemed necessary and Seller shall have the right to have a representative present at the tests so made. If, upon any test, any metering equipment is found to be inaccurate by three (3) per cent or more, registration thereof shall be corrected at the rate of such inaccuracy for any period which is definitely known or agreed upon, but in case such period is not definitely known and cannot be agreed upon from other meters or available records, then for any period of incomplete or inaccurate operation the settlement shall be in accordance with the available readings taken during the last preceding ten (10) days when the meter was registering accurately, and for the first ten (10) days after the meter was restored to accuracy giving due consideration to the difference in operation of Seller's wells but the period of adjustment shall not exceed thirty (30) days preceding the test and all claims of either party as to the gas delivered or received otherwise than as shown by said meters, must be preferred in writing by such claim-

ing party within ninety (90) days from the commencement of such claimed discrepancy, and all claims of each party hereto concerning either the comparative amount, as related to other wells, or the absolute amount, of gas taken are waived unless corrections or adjustments are made or claimed in writing within said ninety (90) days' period.

The gas delivered hereunder shall be measured at prevailing meter pressures and the volumes thereof shall be computed on a pressure base of sixteen and four-tenths (16.4) pounds per square inch absolute pressure and on a tempera- [fol. 108] ture base of sixty (60) degrees Fahrenheit. It is assumed and agreed for the purpose of this contract that the gas delivered hereunder obeys Boyles' Law and flowing temperature of the gas in the meter is sixty (60) degrees Fahrenheit.

In the event orifice meters are used for the measurement of gas delivered hereunder by Seller to Cities, coefficients shall be based on the basic orifice factor as last published and approved by the Gas Measurement Committee of the American Gas Association. It is assumed and agreed that the values of the Reynolds number factor and the expansion factor are one (1). Specific gravity determinations for the purpose of measurement computation shall be made in accordance with an approved method and the average of these determinations during each current fiscal month shall be used at the close of that month for calculating the volume of gas delivered hereunder.

5. Subject to the terms and conditions and within the limitations herein set forth, Seller agrees to sell and deliver to Cities, and Cities agrees to purchase and receive from Seller all natural gas in its natural state of production, except casinghead gas, produced from Seller's said acreage; provided, that in the event at any time in Seller's opinion, the natural pressure of said gas at the head of any well or wells is insufficient for the delivery of the otherwise potential marketable volume therefrom into Cities' local gas gathering systems, then Seller shall have the right to install, operate and maintain at its own cost, risk and expense equipment for the purpose of boosting said pressure to that required for making up such pressure deficiency, but only while Seller meets Cities' standard

requirements for gas cooling and/or dehydration or so much of either as Cities in its sole judgment may deem necessary at each one of Seller's such compressor installations. Seller shall deliver gas hereunder to Cities in such volumes and at such times as requested by Cities up to the delivery capacity of Seller's wells located on said leases, provided, however, that Seller shall not be required to operate its wells in a manner not conforming to usual good practice. Unless and until Cities actually delivers gas from Seller's said acreage into said Grant County, Kansas to Kansas City twenty-six (26) inch main trunk line, Cities agrees to purchase and receive from Seller hereunder ratably with all natural gas produced by Cities from its own wells located in the Kansas-Hugoton Field. But, beginning with the fiscal month, as hereinafter defined, following the date when gas from Seller's wells is first delivered into said twenty-six (26) inch main trunk line, Cities agrees to purchase and receive from [fol. 109] Seller hereunder ratably with all natural gas purchased or produced by Cities in the Kansas-Hugoton Field and received into Cities' said Grant County, Kansas to Kansas City twenty-six (26) inch pipeline, such natural gas as may from time to time, be legally produced by Seller from wells located on its said leases. "Ratably" as used herein means in proportion to well allowables lawfully fixed and determined by the State Corporation Commission of Kansas, and if well allowables shall cease to be fixed by said Commission or other regulatory body having jurisdiction thereover, then, in proportion to the "deliverability" of the wells and the acreage attributable thereto, from which Cities shall be producing and/or purchasing gas from time to time and which are located in the Kansas-Hugoton Field.

6. Cities agrees to pay Seller for all of the gas sold and delivered hereunder at the rate of seven (7) cents per one thousand (1000) cubic feet, on the basis of agreed measurement elsewhere herein recited, during the first five (5) years beginning with the date of the first delivery of gas from Seller to Cities hereunder and seven and one-half (7½) cents per thousand (1000) cubic feet for all gas delivered hereunder during the next succeeding five (5) year period.

Payments shall be made monthly by check, on a division order to be furnished by Seller, and for all gas delivered hereunder during any fiscal accounting month payments shall be made on or before the twenty-fifth (25th) day of the next following calendar month. The fiscal accounting month shall be from the twenty-third (23rd) day of one calendar month to the twenty-second (22nd) day, inclusive, of the next succeeding calendar month. Cities shall accompany each monthly payment with a statement showing the gas delivered during the fiscal month for which settlement is being made.

It is agreed that temporarily Cities may sell gas from the Pleasant Valley acreage locally to another pipeline company pending arrangements for a permanent outlet. During the time Cities sells such gas locally, but not after November 22, 1949, the price for gas from said Pleasant Valley acreage shall be five (5) cents per thousand (1000) cubic feet instead of the price elsewhere herein provided.

In the event the weighted average price paid by Cities to producers other than Seller, for gas produced in the Kansas-Hugoton Field exceeds the price to be paid to Seller under the provisions hereof, the price herein shall be increased to such weighted average price while so paid; however, this provision shall not apply to the five (5) cents [fol. 110] temporary price for gas from the Pleasant Valley acreage. In determining the weighted average price paid to others, one-half cent (½¢) shall be deducted from the prices paid by Cities in transactions where the producer gathers the gas and delivers it into Cities' main gathering line.

7. All of the property and equipment installed by either of the parties hereto, under the terms of this contract shall remain the property of that respective party, and each of the parties hereto shall have the right to remove its said equipment whenever it is no longer needed to enable such party to perform its obligations to the other party; however, it is understood and agreed that each of the parties hereto assumes as between the parties all of the responsibility for the operation and maintenance of, and the obligations arising out of, the property, machinery and equipment which it installs, and each of the parties hereto holds the other harmless from any and all damages and/or claims

for damages of whatsoever kind resulting from the operation, maintenance and reclaim of the property, machinery and equipment which it has installed.

8. Seller warrants title to the gas it delivers hereunder and right to sell same and that it is clear of all liens and adverse claims. In case of adverse claims to the title of any gas purchased hereunder or to the land from which it is produced or to any unpaid royalties, Cities may, without otherwise affecting this contract, retain the purchase price thereof (without interest) until such claim is finally determined or until adequate and satisfactory bond to hold it harmless is furnished.

9. Cities shall at no time be required to receive gas from Seller at any one of its such wells which has a gross heating value of less than nine hundred sixty (960) British Thermal Units per cubic foot; however, the receipt of gas of lesser BTU content shall not constitute a waiver of Cities' right to reject future deliveries of similar gas.

Cities shall have the right, when said gas becomes unmerchantable by reason of the hydrogen sulphide content or from any other or different causes affecting adversely the quality of the gas, or when the content of said gas renders the reception or transportation thereof in pipeline owned or operated by Cities hazardous, or difficult or injurious to its property or to the ultimate consumer thereof, to cease taking same until such time as it again becomes merchantable or the causes rendering the reception, transportation and utilization of said gas hazardous, difficult or injurious [fol. 111] as aforesaid are corrected; however, under no circumstances will it be urged that the gas available for delivery hereunder is unmerchantable, hazardous or injurious by reason only of excessive hydrogen sulphide content unless such content exceeds one (1) grain per hundred cubic feet or by reason only of excessive sulphur content, unless the total sulphur content exceeds twenty (20) grains per hundred cubic feet. The Seller shall, when said gas becomes unmerchantable or the reception, transportation and utilization thereof becomes hazardous, difficult or injurious as aforesaid, with all reasonable promptness take all reasonable and practicable steps to eliminate and correct the causes rendering such gas unmerchantable.

The unit of volume for determining gross heating value, hydrogen sulphide and sulphur content only shall be one (1) cubic foot of gas saturated with water vapor, at a base temperature of sixty (60) degrees Fahrenheit, and at a pressure of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit. The gas to be delivered hereunder is assumed but not guaranteed to have a gross heating value of not less than one thousand (1000) BTUs per Cubic foot. If, in any fiscal month, as herein defined, the average heating value of the gas delivered from any such well shall fall below nine hundred and seventy-five (975) BTUs per cubic foot, the price to be paid by Cities to Seller for that gas delivered during such month shall be decreased proportionately to the deficiency in gross heating value below one thousand (1000) BTUs per cubic foot.

10. Seller agrees to arrange for a telephone and connections to be installed and maintained in its Kansas-Hugoton Field operating headquarters to enable the parties hereto to communicate with each other and Seller agrees to promptly notify by telephone the pressure dispatcher of Cities at Wichita, Kansas, or Cities' field representatives whose names, addresses and telephone numbers shall be furnished to Seller in writing of any interference affecting the delivery of gas hereunder, and to begin, increase, decrease or suspend the delivery of gas hereunder on the orders of said pressure dispatcher or any one of the above authorized representatives of Cities.

11. Cities shall not be bound by any transfer of interest in and to the gas purchased hereunder until it has been furnished with the original or a certified copy of the proper instruments showing clearly such transfer of interest.

12. This contract shall become effective on the date herein first recited and shall continue in force for a period of [fol. 112] ten (10) years after the date of the first delivery of gas from Seller to Cities hereunder, and for successive annual periods thereafter provided that either party may cancel this contract at or after the expiration of said ten (10) year term by giving the other party written notice of its intention to do so at least thirty (30) days prior to the beginning of any such annual period.

13. The existing gas conservation assessment tax of one-half (½) mill per thousand cubic feet of gas now assessed by the State of Kansas shall be paid wholly by Seller. Any increase in such gas conservation assessment or any new or additional production, severance, gathering, sales, delivery or other excise tax or taxes imposed upon Seller by the State of Kansas or any subdivision thereof, or by the Federal Government, in respect to the gas produced by Seller for delivery to Cities hereunder, shall be paid entirely by Seller in the first instance and Seller may bill Cities for one-half (½) of the amount annually and Cities agrees to pay promptly.

14. Seller reserves the right to use gas produced from its said leases for the development and operation of any of them and of other leases Seller now owns or may hereafter acquire in the vicinity thereof, and Seller reserves the right to deepen, plug back or abandon any well covered hereby whenever, in Seller's opinion it becomes necessary to do so.

15. Seller retains the right to terminate this contract by thirty (30) days' prior written notice, anything herein to the contrary notwithstanding, in the event either one or both of the following things occur as set out in (A) and (B), and by longer prior written notice in (C),

(A) If the Federal Power Commission shall assert its jurisdiction of the production, gathering, or the price paid the producer for gas sold under this contract.

(B) When Seller has prepared to and actually begins to use gas produced from said premises as a raw material for manufacturing processes of synthetic petroleum products or chemicals, and for the fuel requirements of that plant only.

(C) Seller also retains the right to withdraw permanently from the terms of this contract any well or wells after the wellhead pressures thereof shall have declined to such an extent that gas therefrom will not feed into Cities' local gas gathering systems by natural

well pressures, unless Seller compresses gas therefrom, as elsewhere herein it retains the right to do; but then, [fol. 113] only after Seller has given notice to Cities in writing of its intention of so withdrawing any well or wells and setting the date therefor which date shall not be less than six (6) months after the date of Seller's such notice, anything elsewhere herein to the contrary notwithstanding.

Cities enters into contracts generally similar to this one for the purpose of obtaining sufficient reserves of gas to meet the requirements of the markets it now serves and/or may serve. It has determined from studies covering the possible connecting of substantial numbers of wells located or to be located in the general vicinity of said premises together with the costs of pipelines for the transportation of gas from those wells to its said Hugoton compressor station, that the costs thereof will approximate eighteen thousand dollars ($18,000) per well.

Cities agrees to such whole or partial termination hereof by Seller and Seller hereby also agrees to reimburse Cities by check delivered to it within thirty (30) days after Seller's receipt of Cities' invoice setting out any unused portion of said costs per well less salvage value, if any, of the pipelines and equipment no longer required by Cities after such termination under the provisions of (A) and (B) of this Section Fifteen (15) hereof by Seller in the proportion that said unused portion of the firm term hereof is to said ten (10) year firm term.

16. All of the terms, covenants and agreements hereof shall run in favor of and be binding upon the parties hereto, their successors and assigns. This contract is assignable by either party hereto, but only after such party has obtained the written consent of the other party to such assignment.

17. The agreements and undertakings hereof are subject to valid present and future orders, rules and regulations of duly constituted authorities having jurisdiction.

18. In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out

its obligations under this agreement, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

[fol. 114] The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, except financial, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include, (a) in those instances where any party hereto is required to obtain servitudes, rights of way grants, permits or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at a reasonable cost and after the exercise of reasonable diligence, such servitudes, rights of way grants, permits or licenses; and (b), in those instances where any party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permission.

It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirements

that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in quadruple the date and year first above written.

THE TEXAS COMPANY

By /s/ M. J. HEALD
Attorney in Fact

COLUMBIAN FUEL CORPORATION

By /s/ C. E. KAYSER
President
Jointly and Severally as "Seller"

ATTEST:

By: /s/ R. A. COVER
Ass't Secretary

[Seal]
Columbian Fuel Corporation

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice-President
"Cities"

ATTEST:

By: (Illegible)
Asst. Secretary

[Seal]
Cities Service Gas Company

[Stamp—Approved as to form /s/ Illegible—Checked and Approved WAP, RAC]

[fol. 115]

EXHIBIT C TO ANSWER

GAS PURCHASE CONTRACT

This contract made and entered into this 10th day of January, 1950, by and between Sunflower Natural Gas Company, Inc., a Kansas corporation, with offices in Kansas City, Missouri, hereinafter referred to as "Sunflower", and Cities Service Gas Company, a Delaware corporation, with offices in Oklahoma City, Oklahoma, hereinafter referred to as "Cities".

WITNESSETH:

WHEREAS, Sunflower owns leases covering gas rights on lands designated on the map and list attached hereto marked EXHIBIT A and hereby made a part hereof for all purposes and deems that at least 22,000 acres of said lands in Seward County, Kansas, and 5,883 acres of said lands in Texas County, Oklahoma, proven for natural gas production, and

WHEREAS, Sunflower intends to drill or cause to be drilled wells thereon and desires to sell the gas produced therefrom to Cities, and

WHEREAS, Sunflower may acquire additional acreage adjacent to or adjoining its presently owned acreage hereinabove described and if such additional acreage is acquired Sunflower intends to drill or cause to be drilled wells thereon and desires to market gas produced therefrom under this agreement, and

WHEREAS, Cities desires to purchase gas produced from said lands.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree each with the other as follows:

1. Subject to the terms and conditions herein set forth Sunflower agrees to sell and deliver to Cities and Cities agrees to purchase and receive from Sunflower all natural

gas in its natural state of production, except casinghead gas, produced from Sunflower's said acreage. Sunflower shall deliver gas hereunder to Cities in such volumes and at such times as requested by Cities up to the delivery capacity of Sunflower's wells located on said lands; provided, however, Sunflower shall not be required to operate its wells in a manner not conforming to usual good practice. Cities agrees to purchase and receive gas from Sunflower hereunder ratably with all natural gas purchased or produced by Cities in the Kansas Hugoton field and [fol. 116] in the Oklahoma Hugoton field as may from time to time be legally produced by Sunflower from said lands. "Ratably" as used herein with respect to wells located in Kansas means in proportion to well allowables lawfully fixed and determined by the State Corporation Commission of Kansas; likewise "ratably" as used herein with respect to wells located in Oklahoma means in proportion to well allowables lawfully fixed and determined by the State Corporation Commission of Oklahoma; and if well allowables shall cease to be fixed by either of said Commissions or other regulatory body having jurisdiction thereover, then in proportion to the deliverability of the wells, and the acreage attributable thereto, from which Cities shall be producing and/or purchasing gas from time to time in the Kansas Hugoton or the Guymon Hugoton field, respectively.

2. Sunflower reserves the right to use gas produced from said lands for the development and operation thereof and other leases and lands Sunflower may hereafter acquire in the vicinity thereof, and Sunflower reserves the right to deepen, plug back and abandon any well covered hereby whenever in Sunflower's opinion it becomes necessary to do so.

3. Sunflower agrees to drill or cause to be drilled upon said lands not less than two (2) wells per month, excepting for weather and other conditions beyond its reasonable control. Sunflower will cause such drilling operations to begin immediately upon final execution of this contract.

Sunflower agrees to maintain its gas rights upon said land in full force and effect, at its own cost and expense, until said lands are proven unproductive of gas in commercial quantities or until the leases on said lands or portions thereof have been tendered to Cities as herein provided. Sunflower shall have the right, from time to time to substitute acreage of equal value and extent for a like amount of acreage described and included in Exhibit A after first obtaining approval of Cities (and Cities agrees that it will not capriciously or unreasonably withhold its approval); provided, however, Sunflower shall have the right without consent of Cities to exchange or trade acreage dedicated hereunder with any acreage in the Hugoton field dedicated to Cities under its similar gas purchase contracts with others and Sunflower shall immediately notify Cities of any such exchange or trade. Any acreage acquired by Sunflower through substitution, exchange or trade shall immediately be dedicated in the same manner hereunder as the acreage designated in Exhibit A.

[fol. 117] If at any time Sunflower deems any of its leases, covered hereby, to have been condemned and of no longer any value or undesirable to keep or develop it shall tender to Cities at least sixty (60) days prior to the expiration date of any such lease or leases, an assignment of such lease or leases. If Cities declines to accept such assignment within thirty (30) days after the date of such tender, Sunflower may at its option release, surrender or otherwise dispose of such lease or leases: If Cities accepts such assignment of any lease or leases upon which there is a gas well, Cities shall pay to Sunflower the reasonable salvage value of the well, casing and equipment thereon used in the operation of said well or wells.

4. Cities agrees to construct gathering lines to receive gas from Sunflower's wells, it being understood that Cities shall not be obligated to begin the construction of such lines until Sunflower shall have completed on the Seward County lands covered by this contract, twenty-four (24) wells capable of producing gas in commercial quantities. Upon completion of said twenty-four (24) wells, Cities

shall proceed to build the lines and connect said wells with reasonable dispatch and to complete said lines and connections within ninety (90) days thereafter. It is understood and agreed that Cities shall not be required to connect and receive gas from wells located on the Texas County, Oklahoma acreage, covered hereby, prior to March 1, 1951, after which date Cities shall construct gathering lines and connect with reasonable dispatch all such wells completed by Sunflower on said Texas County acreage.

5. For the purpose of properly measuring the gas to be sold and delivered hereunder by Sunflower to Cities, Cities agrees to so install, operate and maintain metering equipment of suitable size and design at a suitable location on each drilling unit upon which Sunflower has completed a commercial gas well. Cities is hereby given easement by Sunflower for the installation, operation and maintenance of such metering equipment together with the necessary pipeline to the gas well on each drilling unit on any of Sunflower's such lands, insofar as Sunflower has legal right to grant such easements and Cities is hereby granted the right of removing its such equipment within a reasonable time after the expiration or cancellation hereof. Sunflower shall have the right to inspect said metering equipment in the presence of representatives of Cities and to require tests thereof, and to witness same, but in no event shall Sunflower have the right to alter or in any manner disturb, manipulate or tamper with any of Cities' [fol. 118] such equipment. Cities shall test the metering equipment installed for the purpose of measuring gas delivered hereunder at least once each month or oftener if deemed necessary and Sunflower shall have the right to have a representative present at the tests so made. If, upon any test, any metering equipment is found to be inaccurate by three (3) per cent or more, registration thereof shall be corrected at the rate of such inaccuracy for any period which is definitely known or agreed upon; but in case such period is not definitely known and cannot be agreed upon from other meters or available records, then for any period of incomplete or inaccurate operation the settlement shall be in accordance with the available readings

taken during the last preceding ten (10) days when the meter was registering accurately, and for the first ten (10) days after the meter was restored to accuracy, giving due consideration to the difference in operation of Sunflower's wells, but the period of adjustment shall not exceed thirty (30) days preceding the test and all claims of either party as to the gas delivered or received otherwise than as shown by said meters, must be preferred in writing by such claiming party within ninety (90) days from the commencement of such claimed discrepancy, and all claims of either party hereto concerning either the comparative amount, as related to other wells, or the absolute amount, of gas taken are waived unless corrections or adjustments are made or claimed in writing within said ninety (90) days' period.

The gas delivered hereunder shall be measured at prevailing meter pressures and the volumes thereof shall be computed on a pressure base of sixteen and four-tenths (16.4) pounds per square inch absolute pressure and on a temperature base of sixty (60) degrees Fahrenheit. It is assumed and agreed for the purpose of this contract that the gas delivered hereunder obeys Boyles' Law and the flowing temperatures of the gas in the meter is sixty (60) degrees Fahrenheit; provided, however, either party hereto may install and maintain recording thermometers to record the temperature of the gas flowing through the meters, in which event the arithmetic average of the daily temperatures at each meter for each chart period shall be used in computing the volume of gas measured through such meter during such period.

In the event orifice meters are used for the measurement of gas delivered hereunder by Sunflower to Cities, coefficients shall be based on the basic orifice flow factor as last published and approved by the Gas Measurement Committee of the American Gas Association. It is assumed and [fol. 119] agreed that the values of the Reynolds number factor and the expansion factor are one (1). Specific gravity determinations for the purpose of measurement computation shall be made in accordance with an approved method and the average of these determinations during

each current fiscal month shall be used at the close of that month for calculating the volume of gas delivered hereunder.

6. Cities agrees to pay Sunflower for all gas sold and delivered hereunder the price of nine cents (9¢)* per thousand (1000) cubic feet, on the basis of agreed measurement elsewhere herein recited, through June 22, 1956, and ten cents (10¢)* per thousand (1000) cubic feet from June 23, 1956, to June 22, 1962, inclusive. For all natural gas delivered after June 22, 1962, the price shall be subject to adjustment each six (6) year period as follows; but said adjusted price shall be not less than ten cents (10¢) per thousand (1000) cubic feet:

(a) Not less than six months prior to June 22, 1962, Cities and Sunflower shall endeavor to agree upon a price to be paid by Cities for gas to be sold and delivered during the next six (6) year period.

(b) In the event that the parties hereto shall fail to agree upon said price for the next six (6) year period earlier than four months before June 22, 1962, the determination of such price shall be by arbitration as herein provided.

(i) In the event of such arbitration, the parties hereto shall mutually select a nationally known firm of consulting engineers, experienced in the gas business, and of the highest reputation and standing, and of unimpeachable integrity, which firm shall have no interest in either Cities or Sunflower, or in the production, transportation, or sale of natural gas in the Hugoton or Texas-Panhandle gas fields.

(ii) In the event that the parties hereto cannot agree upon the selection of such a firm as arbitrator, the Senior Federal Judge of the District Court of the United States in the State of Kansas shall be requested to select such a firm to act as such arbitrator hereunder. In event of failure or refusal of such District Judge to act, then either party may

* Handwritten computations above price illegible.

request any member of the United States Circuit [fol. 120] Court of Appeals for the Tenth Circuit to make such a selection. It is recognized that none of said Judges named has any official jurisdiction over said matter, but will act individually in making such selection.

(iii) Upon the selection of such firm as arbitrator as herein provided, said arbitrator shall proceed to determine the fair, just and reasonable price to be paid by Cities during the ensuing six (6) year period and the decision of said arbitrator shall be final and binding upon both parties, in the absence of fraud or bad faith on the part of the arbitrator.

(iv) The arbitrator shall; within thirty (30) days from the date of its appointment, designate a time and a place for a hearing of such statements, evidence, and arguments as the parties may desire to submit, supporting the claims of either party as to the fair, just and reasonable price per thousand (1000) cubic feet of gas to be delivered by Sunflower to Cities during the ensuing six (6) year period. Such arbitrator shall be privileged to seek the assistance of experts and men of practical experience in the natural gas business in its considerations.

(v) The fees of the arbitrator and expenses of arbitration shall be borne one-half by Sunflower and one-half by Cities.

(vi) In the event such arbitrator shall fail to reach a decision in four months after its appointment, such arbitrator shall be discharged and a new arbitrator shall be selected in like manner as if no arbitrator had been chosen.

(c) Not less than six months prior to the end of each succeeding six (6) year period, Cities and Sunflower shall commence negotiations to determine the fair, just and reasonable price to be paid by Cities for gas to be delivered hereunder during the next ensuing six (6) year period; and in the event of failure

to agree upon such price, arbitration shall proceed as hereinabove provided.

[fol. 121] (d) It is expressly stipulated that the delivery of gas by Sunflower under this agreement shall not be interrupted because of delay in the determination of the price applicable to delivery of gas, and the delivery of gas shall continue at the previous effective price. Upon determination of the new price, the price shall be applied retroactively to gas previously delivered in the interim.

(e) If in any fiscal accounting month, as herein defined, the average gross heating value of the gas delivered by Sunflower shall fall below the nine hundred sixty (960) BTUs per cubic foot, the price then applicable hereunder, whether by agreement or by arbitration, to be paid by Cities to Sunflower for gas delivered during such month shall be decreased proportionately to the deficiency in gross heating value below nine hundred sixty (960) BTUs per cubic foot.

7. Cities shall pay Sunflower by check on or before the 25th day of each calendar month following Cities' fiscal month for gas accounting for all gas received from Sunflower during such preceding fiscal month (said fiscal month being from the 23rd day of one month to the 22nd day of the succeeding month inclusive). Said payments by Cities to Sunflower shall be made upon the basis of a monthly statement rendered by Cities to Sunflower at the time of payment for gas delivered hereunder. Sunflower may accept such statement, and the payment based thereon, and in the event the same is found incorrect under the provisions hereof, adjustments and payments shall be made accordingly. It is agreed that Cities shall pay Sunflower for all gas purchased by Cities hereunder and that Sunflower will make settlements for all royalties accruing from such production.

8. The existing conservation, excise or production taxes now assessed by the States of Kansas and Oklahoma shall be paid wholly by Sunflower. Any increase in such taxes

or any new or additional production, severance, gathering, sales, delivery or other excise tax or taxes imposed upon Sunflower by either of said States or any subdivision thereof, or by the Federal Government, in respect to the gas produced by Sunflower for delivery to Cities hereunder shall be borne one-half by Sunflower and one-half by Cities.

9. All of the property and equipment installed by either of the parties hereto, under the terms of this contract shall remain the property of that respective party, and each of the parties hereto shall have the right to remove [fol. 122] its said equipment whenever it is no longer needed to enable such party to perform its obligations to the other party; however, it is understood and agreed that each of the parties hereto assumes as between the parties all of the responsibility for the operation and maintenance of, and the obligations arising out of, the property, machinery and equipment which it installs, and each of the parties hereto holds the other harmless from any and all damages and/or claims for damages of whatsoever kind resulting from the operations, maintenance and reclaim of the property, machinery and equipment which it has installed.

10. Sunflower warrants title to the gas it delivers hereunder and right to sell same and that it is clear of all liens and adverse claims. In case of adverse claims to the title of any gas purchased hereunder or to the land from which it is produced or to any unpaid royalties, Cities may, without otherwise affecting this contract, retain the purchase price thereof (without interest) until such claim is finally determined or until adequate and satisfactory bond to hold it harmless is furnished.

11. Cities shall at no time be required to receive gas from Sunflower at any one of its such wells which has a gross heating value of less than nine hundred fifty (950) British Thermal Units per cubic foot; however, the receipt of gas of lesser BTU content shall not constitute a waiver of Cities' right to reject future deliveries of similar gas. If Cities refuses to accept gas from any well because of

heating value of less than nine hundred fifty (950) BTU per cubic foot for any single period in excess of two (2) months, Sunflower may, at its election, cancel this agreement as to such well and the acreage attributable thereto by so notifying Cities.

Cities shall have the right, when said gas becomes unmerchantable by reason of the hydrogen sulphide content or from any other or different causes affecting adversely the quality of the gas, or when the content of said gas renders the reception or transportation thereof in pipelines owned or operated by Cities hazardous, or difficult or injurious to its property or to the ultimate consumer thereof, to cease taking same until such time as it again become merchantable or the cause rendering the reception, transportation and utilization of said gas hazardous, difficult or injurious as aforesaid are corrected; however, under no circumstances will it be urged that the gas available for delivery hereunder is unmerchantable, hazardous or injurious by reason only of excessive hydrogen sulphide content unless such content exceeds one (1) grain per hundred cubic feet or by reason only of excessive sulphur [fol. 123] content, unless the total sulphur content exceeds twenty (20) grains per hundred cubic feet. Sunflower shall, when said gas becomes unmerchantable or the reception, transportation and utilization thereof becomes hazardous, difficult or injurious as aforesaid, with all reasonable promptness take all reasonable and practicable steps to eliminate and correct the causes rendering such gas unmerchantable.

The unit of volume for determining gross heating value, hydrogen sulphide and sulphur content only shall be one (1) cubic foot of gas saturated with water vapor, at a base temperature of sixty (60) degrees Fahrenheit, and at a pressure of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit. The gas to be delivered hereunder is assumed but not guaranteed to have a gross heating value of not less than one thousand (1,000) BTUs per cubic foot.

12. Sunflower agrees to arrange for a telephone and connections to be installed and maintained in its Kansas-

Hugoton field operating headquarters to enable the parties hereto to communicate with each other and Sunflower agrees to promptly notify by telephone the pressure dispatcher of Cities at Wichita, Kansas, or Cities' field representatives whose names, addresses and telephone numbers shall be furnished to Sunflower in writing of any interference affecting the delivery of gas hereunder, and to begin, increase or suspend the delivery of gas hereunder on the orders of said pressure dispatcher or any one of the above authorized representatives of Cities.

13. Cities shall not be bound by any transfer of interest in and to the gas purchased hereunder until it has been furnished with the original or a certified copy of the proper instruments showing clearly such transfer of interest.

14. This contract shall become effective on the date herein first recited and shall continue in force for a period of twenty (20) years after the date of first delivery of gas hereunder, and thereafter so long as natural gas can be delivered hereunder in commercial quantities.

15. All of the terms, covenants and agreements hereof shall run in favor of and the binding upon the parties hereto, their successors and assigns; and shall run with the land above described and the leasehold estates and other interest of the parties therein. This contract is assignable by either party hereto.

16. The agreements and undertakings hereof are subject to valid present and future orders, rules and regulations of duly constituted authorities having jurisdiction.

[fol. 124] 17. In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, as far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall

as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints to governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, partial or entire failure of wells, or any other causes, whether of the kind herein enumerated or otherwise, except financial, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include, (a) in those instances where any party hereto is required to obtain servitudes, rights of way grants, permits or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at a reasonable cost and after the exercise of reasonable diligence, such servitudes, rights of way grants, permits or licenses; and (b), in those instances where any party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permissions.

It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirements that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing [fol. 125] party when such course is inadvisable in the discretion of the party having the difficulty.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in quadruple the date and year first above written.

SUNFLOWER NATURAL GAS COMPANY, INC.

(CORPORATE SEAL)
(SUNFLOWER NATURAL)
(GAS COMPANY)

BY /s/ K. A. Spencer
President

Attest:

/s/ Eugene W. Worgan
Asst. Secretary

CITIES SERVICE GAS COMPANY

(CORPORATE SEAL)
(CITIES SERVICE)
(GAS COMPANY)

BY /s/ Geo. H. Baird
Vice President

Attest:

/s/ A. W. Levan
Asst. Secretary

[fol. 126] EXHIBIT E TO ANSWER

GAS PURCHASE CONTRACT

THIS CONTRACT made and entered into this 29th day of September, 1949, by and between WESTERN NATURAL GAS COMPANY, a Delaware corporation, hereinafter referred to as "Seller", and CITIES SERVICE GAS COMPANY, a Delaware corporation, hereinafter referred to as "Buyer".

WITNESSETH:

WHEREAS, Seller owns certain gas rights in approximately 35,000 acres of land in Grant and Stanton Counties, Kansas, which said land is designated on the map hereto attached, marked Exhibit A, and hereby made a part hereof for all purposes, has drilled approximately fifteen wells thereon, contemplates drilling approximately thirty-nine additional wells thereon, and desires to market the gas produced therefrom, and

WHEREAS, Buyer owns and operates an interstate gas pipe line system, part of which extends from the Kansas-Hugoton Field, in which said land is located, to Buyer's market area in the vicinity of Kansas City, Missouri, and Buyer desires to purchase Seller's gas produced from said land subject to the prior right of El Paso Natural Gas Company under the agreement dated as of May 1, 1947, referred to in Article XIX hereof:

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree with each other as follows:

ARTICLE I

Section 1. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller gas produced from said land in the quantity, at the time and places, upon the terms and for the consideration hereinafter stated.

ARTICLE II

Section 1. Subject to the terms and provisions of this agreement, Buyer shall purchase and receive from Seller

gas produced from Seller's wells situated on said land ratably with all wells from which Buyer purchases or produces gas in the Kansas-Hugoton Field. "Ratably", as that term is used in the preceding sentence, means in proportion to well allowables lawfully fixed and determined by the State Corporation Commission of Kansas or other regulatory body having jurisdiction, and if well allowables shall cease to be fixed by said Commission or other regulatory body, then the last method used by said Commission or other regulatory body in determining allowables shall be applied by the parties hereto to determine "allowables" for the purposes of this Article, and "ratably" shall then mean in proportion to such "allowables".

[fol. 127] ARTICLE III

Section 1. The gas to be delivered hereunder shall be merchantable natural gas as produced from the wells, and Seller shall not be required to subject said gas to treating or other processes. Seller may at its election subject said gas to mechanical separation for the recovery of liquid hydrocarbons but shall not remove any liquid or lighter hydrocarbons therefrom by any other process.

Section 2. The gas to be delivered hereunder shall have a gross heating value of not less than 960 British Thermal Units per cubic foot. The receipt by Buyer of gas of a lower gross heating value than 960 British Thermal Units per cubic foot shall not constitute a waiver of Buyer's right to reject future deliveries of similar gas. If the British Thermal Unit content of the gas delivered from any of Seller's wells shall fall below 975 British Thermal Units per cubic foot in any fiscal month, the price to be paid by Buyer to Seller for the gas delivered from such well or wells during such fiscal month shall be reduced by a fraction, the numerator of which shall be the average deficiency in the total British Thermal Units per cubic foot below 1000, and the denominator of which shall be 1000. Such reduction in price shall be reflected on the statement rendered for the particular fiscal month involved and the net amount so determined shall be the total amount to be paid by Buyer for such gas for such fiscal month.

Section 3. The gas to be delivered hereunder shall be sweet gas and shall not contain more than ¼ grain of hydrogen sulphide per 100 cubic feet and shall not contain more than 10 grains of total sulphur per 100 cubic feet. Buyer may, without liability to Seller, refuse deliveries of gas from any well during any period when the gas from such well does not meet the specifications required by this Section.

Section 4. The gas to be delivered hereunder shall be commercially free of water, crude oil, hydrocarbons in liquid form, dust, gums, oxygen, impurities and other objectionable substances, and Seller shall use every reasonable effort to keep said gas free from such liquids and objectionable substances, but shall not be required to install and operate dehydration facilities. The carbon dioxide content of the gas shall not exceed 1% by volume.

Section 5. The unit of volume for determining gross heating value, hydrogen sulphide content and sulphur content, shall be one cubic foot of gas saturated with water vapor at a base temperature of 60 degrees Fahrenheit and at a pressure of 30 inches of mercury at 32 degrees Fahrenheit.

Section 6. Anything contained in this agreement to the contrary notwithstanding, should Seller be unable to deliver to Buyer under the provisions of this agreement from any [fol. 128] well gas of the quality as required by this Article and Buyer should refuse the gas from such well and not accept deliveries thereof for any single period in excess of two (2) months, Seller may, at its election, cancel this agreement as to such well and the acreage attributable thereto by so notifying Buyer.

Article IV

Section 1. The delivery point of the gas to be sold hereunder shall be designated by Seller, and each shall be near the wellhead of the particular well or wells it is to serve.

Article V

Section 1. The sales unit of the gas deliverable under this agreement shall be 1000 cubic feet.

Section 2. The volumes of gas delivered by Seller hereunder from each of Seller's wells shall be measured at the orifice meter or meters of Buyer at each point of delivery, which meters, together with any collateral equipment of Buyer necessary for measuring said gas, Buyer agrees to install, maintain and operate at or near each delivery point; provided that if any such meter or collateral equipment be located at some place other than the delivery point, Seller may require their removal to the delivery point if necessary because of lease requirements or because of leakage between the delivery point and the then existing measuring point. Orifice meter coefficients shall be based on the basic orifice flow factor as last published and approved by the Gas Measurement Committee of the American Gas Association. It is agreed that the values of the Reynolds number factor and the expansion factor shall be assumed to be one (1).

Section 3. The unit of volume for the purpose of measurement shall be one cubic foot of gas at a temperature base of 60 degrees Fahrenheit and at a pressure of 16.4 pounds per square inch absolute.

Section 4. For the purposes of this contract it shall be assumed that the temperature of the gas flowing through the meters is 60 degrees Fahrenheit; provided, however, that Seller may, at its option, install not more than ten recording thermometers at such points of metering as shall permit the recording of the temperature of a portion of the gas being delivered hereunder, and if any such recording thermometers are installed the arithmetical average of the hourly temperature recorded during each day shall be used to make corrections in volume computations. If Seller elects to install any such recording thermometers, Buyer shall change and calculate the temperature charts thereon and will promptly, if the same comes to Buyer's attention, [fol. 129] notify Seller of any defect in or damage to said thermometers or of any failure of said thermometers to register accurately.

Section 5. The specific gravity of the gas flowing through the meters shall be determined by joint test each month as near the first of the month as practicable by the use of an

Edwards balance or such other method as may be mutually agreed upon. Such tests shall determine the specific gravity to be used in computations for the fiscal month when such tests are made.

Section 6. Corrections shall be made for deviation of the gas from Boyle's Law at the pressures and temperatures under which the gas is delivered by Seller to Buyer. In computing the correction for deviation from Boyle's Law, tables from Bulletion TS-402 (1947) of the California Natural Gasoline Association, or equivalent method agreed upon, shall be used.

Section 7. Seller may install, maintain and operate check meters and collateral equipment to be installed so as to not interfere with the operation of the facilities through which Buyer receives gas at or near the delivery points. Buyer shall have access to such check measuring equipment at all times during business hours, but the reading, calibrating and adjustment thereof and the changing of charts shall be done only by the employees or agent of Seller.

Section 8. From time to time and at least once a month, on a date as near the first of the month as practicable, the accuracy of Buyer's meters shall be verified in the presence of representatives of both Seller and Buyer, and the parties shall jointly observe any adjustments which are made to such meters. If either party at any time shall notify the other that it desires a special test of any meter, the other party shall cooperate to secure immediate verification of the accuracy of the meter and joint observation of any adjustments. Each party shall give to the other notice of the date of all tests in order that the other party may conveniently have its representative present.

Section 9. Any meter found on test to register in an amount not more than 2% fast or slow shall be deemed to be correct, but the same shall promptly be adjusted to register accurately. In the event any meter upon test proves to more than 2% fast or slow, then any previous readings of such meter shall be corrected to zero error for any period which is known definitely or agreed upon, but in case the period is not known definitely or agreed upon, then for a period extending back ½ of the time elapsed since the date of

the last test. If for any reason any meter is out of service or out of repair so that the volume of gas purchased cannot [fol. 130] be ascertained or computed from the reading thereof, the volume of gas purchased during the period such meter is out of service or out of repair shall be estimated and agreed upon by the parties hereto on the basis of the best data available, using the first of the following methods which is feasible:

(a) By using the registration of Buyer's check meter, if installed and accurately registering;

(b) By correcting the error if the percentage of error is ascertainable by calibration test or mathematical calculation;

(c) By estimating the quantity of deliveries by comparison with deliveries during preceding periods under similar conditions when the meter was registering accurately.

Section 10. The gross heating value of the gas in British Thermal Units per cubic foot shall be determined from time to time by Buyer at intervals of not less than three (3) months, or by means of a recording calorimeter of the Thomas type, at the option of Buyer, to be installed and operated at Buyer's expense. Seller shall have the right to be represented at and to participate in all tests of the gas for such determination and in all tests of said recording calorimeter, if installed.

Section 11. Seller shall have the right to be represented at and to participate in all tests of gas delivered hereunder or of any equipment used in measuring or determining the nature or quality of such gas and to inspect, at any time during business hours, any and all equipment of Buyer used for the measurement or determination of the nature or quality of gas delivered hereunder.

Section 12. From time to time and at least once a month on a date as near the first of the month as practicable the accuracy of Buyer's collateral equipment and Seller's recording thermometers, if installed, shall be verified in the presence of representatives of both Seller and Buyer and the parties shall jointly observe any adjustments which are

made in such equipment. If, upon any test, any such equipment shall be found in error, such equipment shall be adjusted at once to read accurately within the limits prescribed by the manufacturer.

Section 13. Each party hereto shall cause to be preserved for a period of at least two (2) years all test data, charts and other similar records.

Section 14. Subject to the other provisions of this agreement, Seller shall deliver gas to Buyer in such volumes and at such times as may be requested by Buyer up to the delivery capacity of Seller's wells. Buyer shall regulate the flow of gas from Seller's wells into its gathering system by means of facilities installed by Buyer. Buyer shall notify Seller of any condition adversely affecting the delivery of gas from any of Seller's wells in order that Seller may proceed to take such corrective measures as it may [fol. 131] deem appropriate. Buyer shall not regulate any of Seller's well equipment, and the well equipment of Seller shall be regulated and handled solely by the employees and agents of Seller.

Article VI

Section 1. The price at which gas delivered hereunder shall be paid for by Buyer shall be 8¢ per 1000 cubic feet, measured and calculated as herein provided.

Article VII

Section 1. On or before the 25th day of each calendar month after the beginning date of the term of this contract Buyer shall render to Seller a statement showing the amount of gas delivered hereunder during the fiscal month ending during the preceding calendar month, together with its check in the amount due for such gas and with sufficient information to explain and support any adjustment made by Buyer with respect to the value of the gas delivered in determining the amount stated to be due. The fiscal month herein referred to shall be from the 23rd day of one calendar month to the 22nd day, inclusive, of the next succeeding calendar month.

Section 2. Should Buyer fail to pay the full amount due Seller when it is due, interest thereon shall accrue at the rate of six per cent (6%) per annum from the date when such payment is due until the same is paid.

Section 3. Each party shall have the right at all reasonable times to examine the books, records and charts of the other party to the extent necessary to verify the accuracy of any statement, charge, computation or demand made under or pursuant to any of the provisions of this contract.

Article VIII

Section 1. Buyer at its sole cost and expense shall construct gathering lines and facilities to receive and measure the gas to be sold hereunder, and Seller hereby grants unto Buyer for such purpose and only insofar as it may have the legal right so to do, and easement or easements over and across the leases and units owned by it. Buyer shall promptly begin the construction of said gathering lines and facilities and agrees to make connections to and begin receiving gas from each of Seller's then completed wells within six months from the date of this agreement. Thereafter as each of Seller's wells are completed or the early completion thereof is comtemplated, Seller shall designate to Buyer the location of each such well which has been or will be completed and the delivery point therefor, and Buyer agrees to make connection and begin receiving gas from any such well at the delivery point so designated within two months from the designation thereof by Seller.

[fol. 132] Section 2. This contract shall become effective as of the date hereof and shall continue in force thereafter until the expiration of ten years from the date of the first delivery of gas from Seller to Buyer hereunder.

Section 3. If when the term of this contract expires Buyer and Seller do not enter into another contract for the purchase and sale of gas from Seller's said properties (the price for gas in which contract, if made, shall be not less than 9¢ per 1000 cubic feet), seller shall purchase from Buyer all of the gathering lines and facilities provided to be constructed by Buyer in Section 1 of this Article, save and except Buyer's main gathering line extending east from the north and south section line located two (2) miles

east of and parallel with the range line between Ranges 37 west and 38 west, Grant County, Kansas, and shall pay to Buyer therefor the total cost of constructing such facilities less depreciation and amortization figured at the rate of three and one-half per cent (3½%) per annum from the date of construction. Buyer shall submit to Seller for Seller's prior approval all job order estimates pertaining to the construction of said gathering lines and facilities and shall inform Seller promptly of the cost of the initial lines and facilities and of the additions thereto as the same are made from time to time.

Article IX

Section 1. Seller shall have the right to sell or otherwise dispose of any gas available for sale which is not being taken by Buyer so long as such sale or disposal does not interfere with deliveries to Buyer or abrogate any of Buyer's rights hereunder.

Section 2. If Buyer shall fail to receive from Seller in any single contract year at least eighty per cent (80%) of the quantity of gas which Seller could have lawfully produced for delivery under this contract during such contract year in accordance with the allowables applicable to Seller's wells which are then committed to this contract, Seller may, by written notice to Buyer given within 120 days from the end of such contract year, withdraw and release from this contract an amount of acreage to be determined by multiplying the number of acres then committed to this contract by a fraction, the numerator of which is such deficiency of take under eighty per cent (80%) and the denominator of which is eighty per cent (80%) of the total amount of gas which Seller could have so lawfully produced. The acreage so withdrawn and released from this contract shall be that which is designated by Seller in its notice to Buyer. The rights granted Seller in this Section may be exercised by Seller as often and whenever during any contract year any such deficiency occurs and regardless of whether sales of gas from Seller's wells are being made to others.

[fol. 133] ARTICLE X

Section 1. Seller hereby excepts from this contract and expressly reserves unto Seller and Seller's successors and assigns, the following rights and gas sufficient to satisfy such rights:

(a) The right to deliver to the lessors in any of the leases or units upon which Seller's wells may be situated sufficient gas to meet the requirements of lessee's obligations under such leases to furnish gas to such lessors;

(b) The right to use from said leases and units, at Seller's option, all of such gas as Seller may need for the development and operation thereof and the development and operation of Seller's properties situated in the vicinity thereof, including, but not limited to, the use of gas for fuel in drilling;

(c) The right to sell to others than Buyer, free from the terms of this agreement, all gas not used by Buyer hereunder produced from Seller's properties prior to the date of the first deliveries of gas under this agreement;

(d) The right to sell to others than Buyer, free from the terms of this agreement, gas to be used for farming operations conducted on or near Seller's leases and units;

(e) The right, as between Buyer and Seller, to retain and dispose of (free from any and all claims by Buyer) any and all liquids recovered by Seller by mechanical separation from gas prior to its delivery to Buyer;

(f) The right to operate the properties covered by this agreement, free from any and all control by Buyer, in such manner as Seller, in its sole discretion, deems advisable, including, without limitation, the right to drill new wells, to repair or rework old wells, to renew or extend, in whole or in part, any lease or unit covered by this agreement and to abandon any well or surrender, release or terminate any lease not

deemed by Seller capable under normal methods of operation of producing gas in commercial quantities;

(g) The right from time to time to alter any unit by increasing or decreasing the surface acreage contained therein, or to pool or combine any unit or any part of any unit with other properties owned by Seller or others or to include in any unit any interest in the lands covered by such unit not theretofore included in such unit, or to remove any lease or any part thereof from any unit, or to make any other change in any unit deemed necessary by Seller, and in the event any such change or alteration is made in any unit, this agreement shall continue to apply to the interest of Seller in the property described and referred to herein and shall extend and apply to the interest of Seller in the newly formed property to the extent that such interest is derived from the property described herein. Likewise, Seller shall have the right from time to time to pool and combine any lease or any part thereof with other properties owned by Seller or others, in which event this agreement shall extend and apply to the interest of Seller in the newly formed property to the extent that such interest is derived from the property described herein.

[fol. 134]

Article XI

Section 1. The price set out above is based on the assumption that every tax on gas or on the production, severance, gathering, transportation, handling, sale or delivery of gas or upon the right or privilege to produce, sever, gather, transport, handle, sell or deliver gas in effect at the time of the execution of this agreement shall remain unchanged during the term hereof. The term "tax" as used in this Article shall mean any tax (other than ad valorem or income taxes), license, fee or charge levied, assessed or made by any governmental authority on the gas itself or on the act, right or privilege of the production, severance, gathering, transportation, handling, sale or delivery of gas which is based on the volume or value of the gas in

question. The term "additional tax" as used in this article shall mean the sum of any increase or increases in any such tax now in effect, or any new tax or taxes hereafter imposed.

Buyer shall reimburse Seller for one-half (½) of any additional tax paid by Seller on the gas delivered hereunder during the term of this contract, and if the presently existing rate of any tax now in effect be decreased or discontinued, Seller shall credit Buyer with one-half (½) of the saving effected by Seller on the gas delivered hereunder by virtue of such decrease or discontinuance.

For the purpose of determining the reimbursement to be made by Buyer to Seller or the credit to be given to Seller by Buyer hereunder, any tax paid by any subsidiary or affiliate of Seller and any tax which Seller under contractual obligation refunds to the person or corporation paying such tax shall be considered to have been paid by Seller.

Article XII

Section 1. Seller warrants title to the gas to be delivered hereunder and its right to sell the same and that the same is clear of all liens and adverse claims. In case of adverse claims to the title of any gas produced hereunder or to the land from which it is produced, Buyer may, without otherwise affecting this contract, retain the purchase price of the gas in question (without interest) until such claim is finally determined or until adequate and satisfactory bond to hold it harmless is furnished.

Article XIII

Section 1. Neither party shall be liable for damages to the other for any act, omission or circumstance occasioned by, or in connection with or consequence of, any acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, sabotage, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, floods, storms, fires, washouts, arrests and restraints of [fol. 135] rulers and peoples, civil distrubances, explosions, breakage or accident to machinery or lines of pipe, temporary failure of gas supply, well blowouts, craterings, and

the binding order of any court or governmental authority, or any other cause, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; but provided, however, that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with the exercise of diligence shall not require the settlement of strikes or lockouts by acceding to the demands of opposing parties when such course is inadvisable in the discretion of the party having the difficulty.

Such causes or contingencies affecting the performance of this agreement by any party hereto, however, shall not relieve such party of liability in the event of its concurring negligence or in the event of its failure to use diligence to remedy the situation and remove the cause in any adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this agreement relieve any party hereto from its obligations to make payments of amounts then due hereunder, nor shall such causes or contingencies relieve any party of liability unless such party shall give notice and full particulars of the same in writing or by telegraph to the other party as soon as possible after the occurrence relied on.

Article XIV.

Section 1. This agreement is subject to all present and future laws and valid orders, rules and regulations of any regulatory body having jurisdiction.

Article XV

Section 1. No waiver by either Seller or Buyer of any one or more defaults by the other in the performance of any of the provisions of this contract shall operate or be construed as a waiver of any other or further default or defaults, whether of a like or different character.

Article XVI

Section 1. All notices, statements and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been effectively given when mailed by United States mail, postage prepaid, and addressed to the respective parties as follows:

Western Natural Gas Company
2001 National Standard Building
Houston 2, Texas

[fol. 136]

Cities Service Gas Company
First National Bank Building
Oklahoma City, Oklahoma

Notices of change of address of either of the parties shall be given in writing to the other in the manner aforesaid and shall be observed in the giving of all future notices, statements or other communications required or permitted to be given hereunder.

Article XVII

Section 1. Should the Federal Power Commission or any successor agency assuming all or any portion of the present functions of the Federal Power Commission or any other body or agency of the Federal Government assume or assert jurisdiction over the sale and delivery of gas under this agreement or the price to be paid therefor, Seller may at any time after the expiration of ninety (90) days thereafter cancel this agreement without further liability on the part of either Buyer or Seller except that Seller shall purchase the gathering lines and facilities of Buyer under the same terms and conditions as are contained in Section 3 of Article VIII of this agreement.

Article XVIII

Section 1. This contract is subject to the prior right of El Paso Natural Gas Company to purchase from Seller the gas produced from said land pursuant to that certain agreement covering the purchase and sale of gas between

Seller and the said El Paso Natural Gas Company, dated as of May 1, 1947, and Seller shall not be liable to Buyer in the event of any exercise by the said El Paso Natural Gas Company of its rights under said agreement.

ARTICLE XIX

Section 1. This agreement shall bind and benefit the successors and assigns of the respective parties hereto; provided that no conveyance or transfer of any interest of either party shall be binding upon the other party until such other party has been furnished with written notice and with a true copy of such conveyance or transfer; provided, further, that either party hereto may assign its right, title and interest in, to and under this agreement to a Trustee or Trustees, individual or corporate, as security for bonds or other obligations or securities without such Trustee or Trustees assuming or becoming in any respect obligated to perform the obligations of the assignor under this agreement, and if any such Trustee be a corporation, without it being required to qualify to do business in the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate originals as of the day and year first above written.

[fol. 137]

WESTERN NATURAL GAS COMPANY

By J. V. Cowan
Vice President

ATTEST:

By Henry O. Weaver
Secretary

CITIES SERVICE GAS COMPANY

By Geo. H. Baird
Vice President

ATTEST:

By A. W. Levan
Asst. Secretary

[fol. 138] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 139]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

THE TEXAS COMPANY, a corporation, Defendant.

DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF
—Filed November 21, 1958

Defendant requests pursuant to Rule 36 of this Court that within ten days after service hereof plaintiff make the following admissions for the purpose of this action only and subject to all objections as to admissibility which may be interposed at trial:

1. (a) That the "Gas Purchase Contract" consisting of ten pages and attached to the answer herein as a part of Exhibit A thereof, constitutes a complete and accurate copy of the "Contract dated June 16, 1949," referred to in Paragraph 3(A) of the complaint herein, exclusive of exhibits and modifications and amendments thereto.

(b) That the writings attached hereto as Exhibits A and B hereof constitute accurate copies of exhibits to or amendments or modifications of the "Contract dated June 16, 1949," referred to in paragraph 3(A) of the complaint herein.

(c) That the letter attached to the answer herein as a part of Exhibit A thereof is a complete and accurate copy of an amendment to the "Contract dated June 16, 1949," referred to in paragraph 3(A) of the complaint herein.

2. (a) That the writing attached to the answer herein as Exhibit B thereof is a complete and accurate copy of the "Letter dated December 17, 1951," referred to in paragraph 3(B) of the complaint herein.

[fol. 140] (b) That the writing attached to the answer herein as Exhibit C thereof is a complete and accurate copy of the "gas purchase contract between Sunflower Natural Gas Company, Inc. and plaintiff dated January 10, 1950," referred to in paragraph 3(B) of the complaint herein.

3. (a) That the writing attached to the answer herein as Exhibit D thereof is a complete and accurate copy of the "Letter dated December 20, 1951," referred to in paragraph 3(C) of the complaint herein.

(b) That the writing attached to the answer herein as Exhibit E thereof is a complete and accurate copy of the "contract between Western Natural Gas Company and plaintiff dated September 29, 1949," referred to in paragraph 3(C) of the complaint herein.

4. (a) That, without regard to the case in the United States Supreme Court referred to in paragraph 6 of the complaint herein, the order of the Kansas State Corporation Commission referred to in paragraph 4 of the complaint herein was never judicially determined to be invalid or ineffective.

(b) That the Kansas State Corporation Commission never modified, reversed, set aside, or rescinded the order referred to in paragraph 4 of the complaint herein.

5. (a) That on February 18, 1949, in its Docket No. 35,154-C (C-1868), the Kansas State Corporation Commission promulgated an order requiring that all persons, firms, or corporations taking gas from the Kansas-Hugoton Field pay or attribute thereto a minimum price of 8¢ per M.c.f. after March 1, 1949.

(b) That the Kansas State Corporation Commission did not, prior to February 21, 1951, modify, reverse, set aside or rescind the order referred to in paragraph 5(a) hereof.

[fol. 141] (c) That the order referred to in paragraph 5(a) hereof was never judicially determined to be invalid or ineffective.

(d) That the writing attached hereto as Exhibit C is a complete and accurate copy of an order of the Kansas

State Corporation Commission promulgated on February 21, 1951, in its Docket No. 35,154-C (C-1868).

(e) That the Kansas State Corporation Commission did not, prior to January 1, 1954, modify, reverse, set aside or rescind the order referred to in paragraph 5(d) hereof.

(f) That the order referred to in paragraph 5(d) hereof was never judicially determined to be invalid or ineffective.

6. (a) That the writing attached to the answer herein as Exhibit F thereof is a complete and accurate copy of an Order entered by the Kansas State Corporation Commission in its Docket No. 34,780-C (C-1825) on May 20, 1953.

(b) That after its effective date the order referred to in paragraph 6(a) hereof was applied by the Kansas State Corporation Commission to require quantities of natural gas taken from the Kansas-Hugoton Field to be computed on a pressure base of 14.65 p.s.i.a., deviated.

(c) That the order referred to in paragraph 6(a) hereof was never judicially determined to be invalid or ineffective.

(d) That the Kansas State Corporation Commission has never modified, reversed, set aside, or rescinded the order referred to in paragraph 6(a) hereof.

7. (a) That the writing attached hereto as Exhibit D is a complete and accurate copy of a letter written by R. L. Morton of Cities Service Gas Company to defendant dated July 17, 1953.

[fol. 142] (b) That R. L. Morton was authorized by plaintiff to write the letter referred to in paragraph 7(a) hereof on behalf of plaintiff.

(c) That the writing attached hereto as Exhibit E is a complete and accurate copy of a letter written by G. C. Roth of Cities Service Gas Company to defendant dated August 25, 1953.

(d) That G. C. Roth was authorized by plaintiff to write the letter referred to in paragraph 7(c) hereof on behalf of plaintiff.

(c) That the letter referred to in paragraph 7(c) hereof is the same letter referred to as "dated August 25, 1953" in the quotation alleged in paragraph 5 of the complaint herein to have been set forth on the voucher checks issued by plaintiff to defendant.

8. That prior to July 16, 1954, the Federal Power Commission had not exercised any authority or jurisdiction under the Natural Gas Act, 15 U.S.C. §§ 717a-717w, over the sales by defendant to plaintiff referred to in the complaint.

9. (a) That the writing attached hereto as Exhibit F is a complete and accurate copy of Order No. 174 issued on July 16, 1954, by the Federal Power Commission.

(b) That the writing attached hereto as Exhibit G is a complete and accurate copy of Order No. 174-A issued on August 6, 1954, by the Federal Power Commission.

(c) That the writing attached hereto as Exhibit H is a complete and accurate copy of the "Order Modifying In Part Order No. 174-A" issued on September 24, 1954, by the Federal Power Commission.

[fol. 143] (d) That the writing attached hereto as Exhibit I is a complete and accurate copy of the Order No. 174-B issued on December 17, 1954, by the Federal Power Commission.

10. (a) That some of the sales of natural gas under each of the contracts referred to in paragraph 3 of the complaint herein made by defendant to plaintiff were sales "in interstate commerce of natural gas for resale," within the meaning of the Natural Gas Act, 15 U.S.C. §§ 717a-717w.

(b) That in making the sales referred to in paragraph 10(a) hereof defendant was an "independent producer" of natural gas as defined in section 154.91 of the Regulations under the Natural Gas Act prescribed by Order No. 174-A of the Federal Power Commission.

11. That 11¢ per M.c.f. at 14.65 p.s.i.a., deviated, was the amount actually being paid by plaintiff to defendant,

on and immediately prior to June 7, 1954, for the sales of natural gas referred to in the complaint.

12. (a) That the writing attached hereto as Exhibit J is a complete and accurate copy of a letter from O. R. Stites of Cities Service Gas Company to defendant dated November 15, 1954.

(b) That O. R. Stites was authorized by plaintiff to write the letter referred to in paragraph 12(a) hereof on behalf of plaintiff.

(c) That the writing attached hereto as Exhibit K is a complete and accurate copy of a letter of Robert N. Berry of Cities Service Gas Company to defendant dated May 13, 1955.

(d) That Robert N. Berry was authorized by plaintiff to write on behalf of plaintiff the letter referred to in paragraph 12(c) hereof.

[fol. 144] 13. (a) That by an order in its Docket No. G-4824, issued December 5, 1955, the Federal Power Commission granted a certificate of public convenience and necessity for the sales by defendant to plaintiff of natural gas under what is referred to in the complaint as the Columbian Contract.

(b) That the certificate of public convenience and necessity referred to in paragraph 13(a) hereof has not heretofore been withdrawn, revoked, or rescinded or determined to be invalid or ineffective.

(c) That defendant accepted the certificate of public convenience and necessity referred to in paragraph 13(a) hereof on the conditions referred to in that certificate.

14. (a) That the documents referred to in paragraph 1 hereof plus those attached hereto as Exhibit L constitute complete and accurate copies of writings on file with the Federal Power Commission pertaining to the price for sales of natural gas to plaintiff under what is referred to in the complaint as the Columbian Contract.

(b) That the documents referred to in paragraph 14(a) hereof which were filed by defendant were filed in response

to regulations of the Federal Power Commission, as revised by that Commission's Order No. 174 and its amendments, and the Natural Gas Act, 15 U.S.C. §§ 717a-717w, or in response to requests of the Federal Power Commission.

(c) That the documents referred to in paragraph 14(a) hereof have not heretofore been withdrawn or rejected or determined to be invalid or ineffective.

[fol. 145] (d) That plaintiff was furnished with copies of the writings referred to in paragraph 14(a) hereof filed by defendant with the Federal Power Commission at the time they were filed with the Federal Power Commission.

(e) That the writings referred to in paragraph 14(a) hereof were a matter of public record and available for the inspection of plaintiff at any time after they were filed with the Federal Power Commission.

15. (a) That the Federal Power Commission granted a certificate of public convenience and necessity for the sales to plaintiff of natural gas under what is referred to in the complaint as the Sunflower Contract.

(b) That the certificate of public convenience and necessity referred to in paragraph 15(a) hereof has not heretofore been withdrawn, revoked, or rescinded or determined to be invalid or ineffective.

(c) That the party to whom it was issued accepted the certificate of public convenience and necessity referred to in paragraph 15(a) hereof on the conditions referred to in that certificate.

16. (a) That writings pertaining to the price for sales of natural gas to plaintiff under what is referred to in the complaint as the Sunflower Contract were filed by Cabot Carbon Company with the Federal Power Commission in response to regulations of the Federal Power Commission, as revised by that Commission's Order No. 174 and its amendments, and the Natural Gas Act, 15 U.S.C. 717a-717w, or in response to requests of the Federal Power Commission.

[fol. 146] (b) That the documents referred to in paragraph 16(a) hereof have not heretofore been withdrawn, revoked or rescinded, or determined to be invalid or ineffective.

(c) That plaintiff was furnished with copies of the writings referred to in paragraph 16(a) hereof filed with the Federal Power Commission at the time they were filed with that Commission.

(d) That the writings referred to in paragraph 16(a) hereof were a matter of public record and available for the inspection of plaintiff at any time after they were filed with the Federal Power Commission.

17. (a) That the Federal Power Commission granted a certificate of public convenience and necessity for the sales to plaintiff of natural gas under what is referred to in the complaint as the Western Contract.

(b) That the certificate of public convenience and necessity referred to in paragraph 17(a) hereof has not heretofore been withdrawn, revoked, or rescinded or determined to be invalid or ineffective.

(c) That the party to whom it was issued accepted the certificate of public convenience and necessity referred to in paragraph 17(a) hereof on the conditions referred to in that certificate.

18. (a) That writings pertaining to the price for sales of natural gas to plaintiff under what is referred to in the complaint as the Western Contract were filed by Western Natural Gas Company with the Federal Power Commission in response to regulations of the Federal Power Commission, as revised by that Commission's Order No. 174 and its amendments, and the Natural Gas Act, 15 U.S.C. §§717a-717w, or in response to requests of the Federal Power Commission.

[fol. 147] (b) That the documents referred to in paragraph 18(a) hereof have not heretofore been withdrawn, revoked or rescinded, or determined to be invalid or ineffective.

(c) That plaintiff was furnished with copies of the writings referred to in paragraph 18(a) hereof filed with the Federal Power Commission at the time they were filed with that Commission.

(d) That the writings referred to in paragraph 18(a) hereof were a matter of public record and available for the inspection of plaintiff at any time after they were filed with the Federal Power Commission.

19. (a) That plaintiff did not at any time contest, protest, or object, in any manner provided by the Natural Gas Act, 15 U.S.C. §§ 717a-717w, or the regulations of the Federal Power Commission promulgated thereunder, to the Federal Power Commission certificate of public convenience and necessity and rate filings for the sales of natural gas to plaintiff referred to in the complaint.

(b) That plaintiff did contest, protest, or object, in a manner provided by the Natural Gas Act, 15 U.S.C. §§ 717a-717w, or the regulations of the Federal Power Commission promulgated thereunder, to a Federal Power Commission certificate of public convenience and necessity for or rate filings for sales of natural gas from the Kansas-Hugoton Field after June 7, 1954, made to it by an independent producer or producers of natural gas other than defendant.

20. (a) That plaintiff could have applied for a stay or suspension of the order of the Kansas State Corporation Commission referred to in paragraph 4 of the complaint herein during the pendency of review proceedings initiated by plaintiff to determine the validity or effect of that order but that plaintiff did not apply for such a stay or suspension.

[fol. 148] (b) That the sanctions referred to in paragraph 4 of the complaint herein for violation of the order of the Kansas State Corporation Commission there referred to applied only if that order of the Kansas State Corporation Commission was valid.

(c) That the sanctions referred to in paragraph 4 of the complaint herein for violation of the order of the Kansas State Corporation Commission there referred to also applied to violations of the orders entered by the Kansas State Corporation Commission in its Docket No. 35,154-C (C-1868) on February 18, 1949, and February 21, 1951.

(d) That the sanctions referred to in paragraph 4 of the complaint herein for violation of the order of the Kansas State Corporation Commission there referred to also applied to violations of the order entered by the Kansas State Corporation Commission in its Docket No. 34,780-C (C-1825) on May 20, 1953.

Morris, Nichols, Arsht and Tunnell, James M. Tunnell, Jr., Andrew B. Kirkpatrick, Jr., Attorneys for Defendant, 3000 duPont Building, Wilmington, Delaware.

Of Counsel: Paul F. Schlicher, 24th Floor Chrysler Bldg., 135 East 42nd Street, New York, New York.

[fol. 149]

Exhibit A to Defendant's Requests for Admissions by Plaintiff

Moscow Block

Exhibit "A"

Lease File No.:	Description:	Number of Acres:	Lease Exp. Date:
114527	NE¼ except r/w of Dodge City and Cimarron Valley Railroad as now loc. over SE cor. of NE¼; and that tract or parcel of land described as the SE¼ lying NW of railroad right-of-way as now located over the SE¼, Sec. 27-31-S-36W	½ of 239.81	11-29-49
115438	NE¼ subject to r/w of Dodge City and Cimarron Valley Railroad as now loc. over SE cor. of NE¼; and that tract or parcel of land des. as the SE¼ lying NW of railroad right-of-way as now loc. over the SE¼, Sec. 27-31S-36W	½ of 239.81	11-29-56
114521	NW¼ Sec. 27-31S-36W, above 3400 feet	160	3-30-57
114500	SW¼ Sec. 27-31S-36W	160	11- 7-52
114510-A	SE¼ SE¼ Sec. 27-31S-36W	½ of 40	12- 2-49
114510-F	All that portion of SE¼ Sec. 27, lying S. and E. of r/w of D. C. & C. V. Railway Co., ex. the SE¼ SE¼ of said Sec. 31S-36W	½ of 26.87	7-14-49
114510-K	That part of SE¼ lying S. & E. of r/w of D. C. & C. V. RR Co. Sec. 27-31S-36W	½ of 66.87	9- 5-54
114510-Q	Tract of 1.38 acres in Sec. 27-31S-36W.	1.38	2-26-51
114510-R	Tract of 1.38 acres in Sec. 27-31S-36W.	1.38	2-19-51
114510-S	Tract of 1.38 acres in Sec. 27-31S-36W.	1.38	2-19-51

Lease File No.:	Description:	Number of Acres:	Lease Eff. Date:
114510-T	Tract of 1.375 acres in Sec. 27-31S-36W.	1.375	2-27-51
115466	NE¼ & SW¼ Sec. 28-31S-36W	320	4-23-51
114524	NW¼ Sec. 28-31S-36W	160	6-18-49
114518	SE¼ Sec. 28-31S-36W	160	9-28-56
114523	NE¼ Sec. 29-31S-36W, above 3400 feet	160	6-18-57
114511	NW¼ and SE¼ Sec. 29-31S-36W	320	10-19-50
114516	SW¼ Sec. 29-31S-36W	160	11-13-52
114501	NE¼ Sec. 30-31S-36W	160	10-20-52
114507	NW¼ Sec. 30-31S-36W	160	4-15-54
114517	SW¼ Sec. 30-31S-36W	160	11-13-52
114515	SE¼ Sec. 30-31S-36W	160	10-22-50
121750	Lots 1 & 2 & E2 NW4 & NE4 Sec. 31-31S-36W	320	10-19-52
81592	SW¼ Sec. 31-31S-36W	151.55	3-12-50
[fol. 150]			
114531	SE¼ Sec. 31-31S-36W	160	3-17-51
121749	E½ Sec. 32-31S-36W	320	10-19-52
121923	W½ Sec. 32-31S-36W	320	10-21-52
48604	NE¼ Sec. 33-31S-36W	160	2- 1-49
115466	NW¼ Sec. 33-31S-36W	160	4-23-51
114520	SE¼ Sec. 33-31S-36W	160	5-23-49
127906	SW¼ Sec. 33-31S-36W	160	9- 2-53
48625	NE¼ Sec. 34-31S-36W	160	2- 1-49
114510-A	NW¼ Sec. 34-31S-36W	½ of 160	12- 2-49
114510-M	NW¼ Sec. 34-31S-36W	½ of 160	9- 5-54
114530	SW¼ Sec. 34-31S-36W	160	9-28-56
127240	SE¼ Sec. 34-31S-36W	160	9- 1-53

[fol. 151]

Pleasant Valley Block

Exhibit "A"

Lease File No.:	Description:	Number of Acres:	Lease Exp. Date:
108576	NE¼ Sec. 33-33S-35W	160	3-23-53
108575	NW¼ Sec. 33-33S-35W	160	9-16-49
108577	SW¼ Sec. 33-33S-35W	160	10- 2-49
108578	SE¼ Sec. 33-33S-35W	160	8-15-50
108579	NW¼ Sec. 34-33S-35W	160	9- 2-49
108580	SW¼ Sec. 34-33S-35W	160	9-16-49
108581	SE¼ Sec. 34-33S-35W	160	9- 2-49
115605	NE¼ Sec. 34-33S-35W	160	3-31-54
108583	NE¼ Sec. 35-33S-35W	160	9- 2-49
108582	NW¼ Sec. 35-33S-35W	160	9- 2-49
108584	SW¼ Sec. 35-33S-35W	160	9- 2-49
108585	SE¼ Sec. 35-33S-35W	160	9- 2-49
108598	W½ & NE¼ Sec. 1-34S-35W	480	8-29-49
108599	SE¼ Sec. 1-34S-35W	160	10-28-49
108597	E½ Sec. 2-34S-35W	320	8-29-49
108596	W½ Sec. 2-34S-35W	320	9-22-51
108593	NE¼ Sec. 3-34S-35W	160	9- 2-49
129741	NW¼ Sec. 3-34S-35W	160	11- 9-50
108594	SW¼ Sec. 3-34S-35W	160	9- 2-49
127229	SE¼ Sec. 3-34S-35W	160	8-23-53
129741	E¼ Sec. 4-34S-35W	160	11- 9-50
108590	NW¼ Sec. 4-34S-35W	160	11- 2-49
108591	SW¼ Sec. 4-34S-35W	160	7-31-49
108592	SE¼ Sec. 4-34S-35W	160	9- 2-49
108587	NE¼ Sec. 5-34S-35W	160	9- 2-49
108586	NW¼ Sec. 5-34S-35W	160	9- 2-49
108588	N½ SW¼ and N½ SE¼ Sec. 5-34S-35W	160	7- 8-50
108589	S½ S½ Sec. 5-34S-35W	160	9- 2-49

[fol. 152]

EXHIBIT B TO DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF

July 29, 1949

Cities Service Gas Company
First National Building
Oklahoma City 1, Oklahoma

Attention Mr. G. C. Roth

Gas Purchase Contract
Extension of Well Connection Date

Gentlemen:

Under date of June 16, 1949, a gas purchase contract (wellhead form) was entered into between The Texas Company and Columbian Fuel Corporation, as Seller, and Cities Service Gas Company, as Buyer, affecting natural gas to be produced from sixteen wells which Texas and Columbian then owned jointly or contemplated drilling jointly in Stevens County, Kansas, on what is known as the Moscow and Pleasant Valley blocks. Among other things, this contract provided that pending the construction of large diameter pipe line by Cities from its Hugoton compressor station to a point within or near Township 34 South, Range 35 West, Stevens County, Kansas, Cities agreed to construct gathering lines to receive and market gas from Seller's wells and to have said gathering lines completed and ready for operation with Seller's completed wells connected thereto not later than August 1, 1949.

It is recognized that at the time negotiations leading up to the execution of said contract were commenced there appeared to be ample time for Cities to comply with the provision of this contract to connect all of Seller's completed wells on or before August 1, 1949. However, the delay in final execution of this contract resulted in lack of sufficient time for Cities to acquire the necessary rights-of-way, lay the gathering lines, and take delivery of gas from Seller's completed wells on or before August 1, 1949.

It is accordingly agreed that Cities will continue with due diligence to complete the work necessary to provide such pipe line well connections and market for gas produced from said wells at the earliest possible date, but that its obligation under said contract of June 16, 1949, to complete said gathering lines and connect Seller's completed wells and market gas therefrom is extended to September 1, 1949.

[fol. 153] Except as hereby modified said contract is to be and remain in full force and effect according to all of its terms and provisions. If this modification is satisfactory, please indicate your acceptance, returning fully executed copies of this letter to each of the Sellers.

Very truly yours,

THE TEXAS COMPANY
Producing Department

CHJ-EV

By /s/ M. L. TERRY
M. L. TERRY
Attorney-in-Fact

[Stamp—Checked and Approved—WAP]

COLUMBIAN FUEL CORPORATION

ATTEST: /s/ R. A. COVER
Ass't Secretary

By /s/ C. E. KAYSER
President
Jointly and severally
"Seller"

[Stamp—Approved as to Form—Two Illegible Signatures]

ACCEPTED:

DATED: August 16, 1949

CITIES SERVICE GAS COMPANY

ATTEST: /s/ A. W. LEVAN
Ass't Secretary

By /s/ GEO. H. BAIRD
Vice President
"Buyer"

[fol. 154]

EXHIBIT K TO DEFENDANT'S REQUESTS FOR ADMISSION BY PLAINTIFF

[Handwritten notation—Correspondence in form of letter of acceptance for filing dated February 7, 1955 furnished May 2, 1955.]

[Illegible Stamp]

[Emblem]

CITIES SERVICE GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY 1, OKLAHOMA

Legal Division

May 13, 1955

The Texas Company
P. O. Box 2420
Tulsa 2, Oklahoma

Attention: J. Howard Johnson
Supt. Gas & Gasoline Plants

Re: Contract Dates 6-16-49, 12-17-51, 12-20-51
Location: Kansas-Hugoton Field

[Handwritten notation on right side of page—Illegible]

Gentlemen:

Our Company is purchasing gas from you from the above described Field under the terms of the captioned Contracts. Under the terms of the Natural Gas Act and Federal Power Commission Order 174 as Amended, our Company is authorized to make payments for natural gas purchased only pursuant to filed Rate Schedules of each Independent Producer. In order to complete our files, it is respectfully requested that you furnish us, at your convenience, copies of the following items which have been checked pertaining to your sale to our Company under the above described Contract:

( ) Statement of price and pressure base contained in Rate Schedule.
( ) Letter of transmittal of Rate Schedule.

( ) A complete list of documents filed as Rate Schedule or Supplements or Amendments thereof.
( ) All correspondence from the Federal Power Commission relating to your Rate Schedule.
(√) Copy of Application for Certificate of Public Convenience and Necessity.
(√) All correspondence from Federal Power Commission relating to your Application for Certificate.
(√) All Orders of Federal Power Commission relating to your Certificate Application and Rate Schedule filing.

With respect to any correspondence from the Federal Power Commission, we are particularly interested in the dates upon which your Rate Schedules and Certificate Applications were accepted for filing, the Federal Power Commission Rate Schedule number, the Docket Number assigned to your Certificate Application, and date of issuance of Certificate.

We will greatly appreciate your prompt cooperation in this matter as this information is needed in order for us to make payments for gas purchased from you.

Very truly yours,

/s/ Robert N. Berry
Robert N. Berry
Attorney

RNB:n

[fol. 155]

EXHIBIT L-1 TO DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF

THE TEXAS COMPANY

TEXACO PETROLEUM PRODUCTS

[Emblem]

PRODUCING DEPARTMENT
OKLAHOMA DIVISION

Houston 1, Texas
P. O. Box 2332

September 24, 1954

[Handwritten notation—8-30-49]

FPC RATE SCHEDULE

The Texas Company
Oklahoma Division Contract
Contract No. O-1

Mr. Leon M. Fuquay, Secretary
Federal Power Commission
Washington 25, D. C.

Dear Sir:

We are enclosing herewith for filing with the Federal Power Commission, in accordance with Sections 154.92(a) and 154.93 of Subchapter E of the Federal Power Commission's regulations under the Natural Gas Act, the following:

(1) Two (2) copies of a gas sales contract between The Texas Company, Seller and Cities Service Gas Company, Buyer, dated June 16, 1949, covering the sale of gas from certain properties located in the Hugoton Field, Stevens County, Kansas. Also two (2) copies of a letter agreement dated September 8, 1949 amending the contract of June 16, 1949 to cover additional acreage.

(2) Two (2) copies each of Seventeen (17) billings made for a recent month covering gas sold from individual

properties under terms of the aforementioned contract and letter agreement, referred to as Table I.

A complete copy of the material included herewith other than Item (1) above has been mailed to Cities Service Gas Company, the Buyer.

[fol. 156] An application for Certificate of Public Convenience and Necessity covering the Oklahoma Division, Producing Department, The Texas Company, has been contemporaneously filed herewith in which application the above mentioned gas sales contract has been designated as Contract No. O-1.

Very truly yours,

THE TEXAS COMPANY

By Signed: W. V. VIETTI
W. V. VIETTI
DIVISION MANAGER
GAS DIVISION

[fol. 157]

EXHIBIT L-2 TO DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	MOSCOW AND PLEASANT VALLEY BLOCKS
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

THE TEXAS COMPANY, Seller, in accordance with Section 154.92 (a) of Subchapter E of the Commission's Regulations under the Natural Gas Act, files herewith said subject contract which was in effect on June 7, 1954, as its rate schedule as defined in Section 154.93. Application for a Certificate of Public Convenience and Necessity has been contemporaneously filed herewith.

This rate schedule is filed under protest and, to avoid the penalties provided in Section 21 of the Natural Gas Act. It is also made subject to The Texas Company's Application for Rehearing in respect to Order 174-A, filed August 25, 1954, Federal Power Commission Docket R-138, any and all resulting decisions, determinations, proceedings, orders, rules or regulations, and any judicial appeals therefrom or reviews thereof. By filing this rate schedule The Texas Company does not admit that it or the sales of gas embraced by such rate schedule are subject to regulation by the Commission and The Texas Company hereby ex-
[fol. 158] pressly reserves not only its legal and equitable rights to contest such regulation but also any and all contractual rights it now has or may in the future have by virtue of the terms and provisions of said rate schedule, whether or not same conflict with or may be contrary to the provisions of any order, rule, regulation, decision or determination that has or may be issued or adopted by the Commission.

There is shown on Table I attached hereto actual billing for a recent month to show how the billing is determined. The volumes and revenues shown represent The Texas Company's working interest and its royalty owners' interest only, and do not include the interests of other working interest and royalty owners.

A copy of this statement, together with letter of transmittal to the Commission required by Section 154.99, has been furnished the Purchaser. The Purchaser has in its possession a complete copy of the subject contract.

Communications with respect hereto should be sent to:

W. V. Vietti, Division Manager
Gas Division
The Texas Company
P. O. Box 2332
Houston 1, Texas

[fol. 159] It is respectfully requested that copies of such communications be sent to:

P. F. Schlicher, Attorney
The Texas Company
135 East 42nd Street
New York 17, New York

and to:

M. L. Terry, Division Manager
Producing Department
The Texas Company
P. O. Box 2420
Tulsa 2, Oklahoma

Respectfully submitted,

THE TEXAS COMPANY

By Signed: W. V. VIETTI
W. V. Vietti
Division Manager,
Gas Division

[fol. 160]
STATE OF TEXAS :
COUNTY OF HARRIS:

BEFORE ME, the undersigned authority, on this day personally appeared W. V. Vietti, who, after being duly sworn, on his oath deposed and said:

That he is Division Manager, Gas Division, Producing Department, The Texas Company, and is duly authorized to make this affidavit, that he has read the foregoing, is familiar with the contents thereof, has examined the rate schedule and exhibits attached hereto, and the facts herein and in said exhibits are true and correct to the best of his information and belief.

Signed: W. V. VIETTI
W. V. Vietti

SUBSCRIBED AND SWORN TO before me this the ..... day of Oct 19 1954, 1954.

E. A. COWART
Notary Public

[fol. 161]

EXHIBIT L-3 TO DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF

TABLE I

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	BANE GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
634	11¢	$ 69.74

The Texas Company .89514 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 162]

TABLE I

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	CURTIS GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
33,053	11¢	$ 3,635.83

The Texas Company .89717 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 163]

TABLE I

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	DUDLEY GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
18,276	11¢	$ 2,010.36

The Texas Company .89717 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 164]

TABLE I

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	EMRIE GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
45,199	11¢	$ 4,971.89

The Texas Company .89717 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 165]

TABLE I

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	MILLER GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
48,596	11¢	$ 5,345.56

The Texas Company .89717 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 166]

TABLE I

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	NEWBY GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
53,384	11¢	$ 5,872.24

The Texas Company .89717 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 167]

TABLE I

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	PACKER GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
1,154	11¢	$ 126.94

The Texas Company .89514 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 168]

TABLE I

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	PRUITT GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
609	11¢	$ 66.99

The Texas Company .89514 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 169]

TABLE I

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	REMER GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
854	11¢	$ 93.94

The Texas Company .89514 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 170]

TABLE I

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	REYNOLDS GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
35,915	11¢	$ 3,950.65

The Texas Company .89717 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 171]

TABLE I

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	RITTENOUR GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
1,345	11¢	$ 147.95

The Texas Company .91025 Interest Only.

NOTE: This property added to original contract by Letter Agreement dated September 8, 1949.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 172]

TABLE I

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	SCHWEITER GAS UNIT
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
948	11¢	$ 104.28

The Texas Company .89514 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 173]

TABLE I

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	TROY SKINNER GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
716	11¢	$ 78.76

The Texas Company .89514 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 174]

TABLE I

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	SKINNER GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1954

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
392	11¢	$43.12

The Texas Company .89514 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 175]

TABLE I

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	THUROW GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
23,860	11¢	$2,624.60

The Texas Company .89717 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 176]

TABLE I

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	VAN SICKLE GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, OKLAHOMA
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
24,610	11¢	$2,707.10

The Texas Company .89717 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 177]

TABLE 1

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	WHEELER GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
849	11¢	$93.39

The Texas Company .89514 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 178]

EXHIBIT L-4 TO DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF

[Handwritten notation—See letter of 7/28/58 of Wimbush]

FEDERAL POWER COMMISSION
WASHINGTON 25

[Two Stamps Illegible]

The Texas Co.
Box 2332
Houston 1, Texas

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing.

In the event that any of the documents comprising the listed rate schedules contain provisions for future auto-

matic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the rates being charged June 7, 1954, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 174-B. The Act and the Commission's rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

Very truly yours,

/s/ LEON M. FUQUAY
Leon M. Fuquay
Secretary

Description of Document		Date of Letter of Transmittal	Rate Schedule Designation
		The Texas Co.	
Statement	undated	9-24-54	F.P.C. Gas Rate Schedule No. 68
Letter	12-20-51	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 68
Bill	April 1954	9-24-54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 68
Statement	undated	9-24-54	F.P.C. Gas Rate Schedule No. 69
Letter	12-17-51	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 69
Bill	June 1954	9-24-54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 69
[fol. 179]			
Contract	5-15-50	9-24-54	F.P.C. Gas Rate Schedule No. 70
Bill	June 1954	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 70
Statement	10-6-54	9-24-54	F.P.C. Gas Rate Schedule No. 71
Contract	10-1-50	9-24-54	F.P.C. Gas Rate Schedule No. 72
Sup. Agree.	3-30-51	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 72
Bill	April 1954	9-24-54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 72
Statement	10-20-54	10-20-54	F.P.C. Gas Rate Schedule No. 73
Contract	6-11-52	10-20-54	F.P.C. Gas Rate Schedule No. 74
Statement	10-20-54	10-20-54	F.P.C. Gas Rate Schedule No. 75
Statement	10-20-54	10-20-54	F.P.C. Gas Rate Schedule No. 77
Statement	10-20-54	10-20-54	F.P.C. Gas Rate Schedule No. 78
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 79
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 80

Continued—The Texas Co.

Description of Document		Date of Letter of Transmittal	Rate Schedule Designation
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 81
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 82
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 83
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 84
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 85
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 86
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 87
Contract	9-19-52	9-24-54	F.P.C. Gas Rate Schedule No. 98
Bill	April 1954	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 98
[fol. 180]			
Contract	8-3-52	9-24-54	F.P.C. Gas Rate Schedule No. 99
Bill	April 1954	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 99
Contract	6-16-49	9-24-54	F.P.C. Gas Rate Schedule No. 100
Letter	9-8-49	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 100
Bill	June 1954	9-24-54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 100
Contract	4-3-50	10-20-54	F.P.C. Gas Rate Schedule No. 101
Letter	4-5-50	10-20-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 101
Letter	4-3-50	10-20-54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 101
Letter	2-15-52	10-20-54	Supplement No. 3 to F.P.C. Gas Rate Schedule No. 101
Contract	6-1-54	10-20-54	F.P.C. Gas Rate Schedule No. 102

Continued—The Texas Co.

Description of Document		Date of Letter of Transmittal	Rate Schedule Designation
Letter	6-1-54	10-20-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 10
Contract	4-26-48	9-24-54	F.P.C. Gas Rate Schedule No. 10
Contract	6-25-47	9-24-54	F.P.C. Gas Rate Schedule No. 10
Contract	5-26-41	9-24-54	F.P.C. Gas Rate Schedule No. 10
Contract	9-9-49	9-24-54	F.P.C. Gas Rate Schedule No. 10
Sup. Agree.	9-9-49	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 10
Sup. Agree.	6-8-53	9-24-54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 10
Bill	April 1954	9-24-54	Supplement No. 3 to F.P.C. Gas Rate Schedule No. 10
[fol. 181]			
Contract	9-9-49	9-24-54	F.P.C. Gas Rate Schedule No. 10
Sup. Agree.	9-9-49	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 10
Sup. Agree.	9-22-50	9-24-54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 10
Bill	April 1954	9-24-54	Supplement No. 3 to F.P.C. Gas Rate Schedule No. 10
Contract	9-9-49	9-24-54	F.P.C. Gas Rate Schedule No. 10
Sup. Agree.	9-9-49	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 10
Sup. Agree.	10-22-52	9-24-54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 10
Bill	June 1954	9-24-54	Supplement No. 3 to F.P.C. Gas Rate Schedule No. 10
Contract	9-9-49	9-24-54	F.P.C. Gas Rate Schedule No. 10
Sup. Agree.	9-9-49	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 10

Continued—The Texas Co.

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
Sup. Agree. 11-18-52	9-24-54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 109
Bill April 1954	9-24-54	Supplement No. 3 to F.P.C. Gas Rate Schedule No. 109
Contract 9-9-49	9-24-54	F.P.C. Gas Rate Schedule No. 110
Sup. Agree. 9-9-49	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 110
Sup. Agree. 5-18-50	9-24-54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 110
Bill June 1954	9-24-54	Supplement No. 3 to F.P.C. Gas Rate Schedule No. 110
[fol. 182]		
Contract 5-23-45	9-24-54	F.P.C. Gas Rate Schedule No. 111
Sup. Agree. 8-1-52	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 111
Bill April 1954	9-24-54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 111
Contract 1-20-53	9-24-54	F.P.C. Gas Rate Schedule No. 112
Statement 11-17-54	11-17-54	F.P.C. Gas Rate Schedule No. 113
Statement 11-17-54	11-17-54	F.P.C. Gas Rate Schedule No. 114
Statement 11-17-54	11-17-54	F.P.C. Gas Rate Schedule No. 115
Statement 11-17-54	11-17-54	F.P.C. Gas Rate Schedule No. 116
Statement 11-17-54	11-17-54	F.P.C. Gas Rate Schedule No. 117
Statement 11-17-54	11-17-54	F.P.C. Gas Rate Schedule No. 118
Statement 11-17-54	11-17-54	F.P.C. Gas Rate Schedule No. 119
Statement 11-17-54	11-17-54	F.P.C. Gas Rate Schedule No. 120

[fol. 183]

EXHIBIT L-5 TO DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF

THE TEXAS COMPANY

TEXACO PETROLEUM PRODUCTS

(Emblem)

PRODUCING DEPARTMENT
GAS DIVISION
W. V. VIETTI, Division Manager

HOUSTON 1, TEXAS
Jun 13, 1957

CHANGE IN RATE SCHEDULE
The Texas Company
Oklahoma Division
Supplement No. 5
FPC Gas Rate Schedule No. 100
Contract O-1 in Docket No. G-4824

Mr. J. H. Gutride, Secretary
Federal Power Commission
Washington 25, D. C.

Dear Sir:

We are enclosing herewith for filing with the Federal Power Commission, pursuant to the Commission's Order No. 197, issued May 23, 1957, a change in the subject Rate Schedule effective July 1, 1957.

A complete copy of the material included herewith has been mailed to:

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma.

Yours very truly,

THE TEXAS COMPANY
PRODUCING DEPARTMENT

By s/ W. V. VIETTI
W. V. Vietti
Division Manager
Gas Division

Enclosure

[fol. 184]

FEDERAL POWER COMMISSION

In The Matter Of

THE TEXAS COMPANY
PRODUCING DEPARTMENT
OKLAHOMA DIVISION

—o—

CHANGE IN RATE SCHEDULE

[fol. 185]

CHANGE IN
RATE SCHEDULE

The Texas Company
Producing Department
Oklahoma Division

Supplement No. 5
FPC Gas Rate Schedule No. 100
Contract O-1 in Docket No. G-4824

CONTENTS

General Statements ..... Pages 1-4

[fol. 186]

SUPPLEMENT No. 5, FPC GAS RATE SCHEDULE No. 100

DOCKET No. G-4824, CONTRACT O-1

SELLER: THE TEXAS COMPANY

PURCHASER: CITIES SERVICE GAS COMPANY

FIELD: HUGOTON

COUNTY AND STATE: STEVENS COUNTY, KANSAS

CONTRACT DATE: JUNE 16, 1949

THE TEXAS COMPANY, Seller, files herewith a Change in Rate Schedule covering the subject contract, as follows:

1. This filing is submitted pursuant to Commission Order No. 197 to reflect a 50% reimbursement of the Kansas

gas severance tax of 1% effective July 1, 1957, levied on producers by act of the Kansas Legislature in House Bill No. 383.

2. Such reimbursement is provided by Section 13 of the contract dated 6-16-49 between The Texas Company and Cities Service Gas Company on file with the Commission and designated Contract O-1 FPC Gas Rate Schedule No. 100.

3. A copy of this filing was served on the buyer as required by the Commission's Regulations on Jun 18 1957.

[fol. 187]

4. Comparison of rates prior to and subsequent to such change in rate (cents per MCF):

Date	Base Price Per MCF	Tax Reimbursement Per MCF	Total Price Per MCF
June 30, 1957	11.000	—	11.000
July 1, 1957	11.000	.055	11.055

Sales for 12 months ending March 31, 1957 2,551,652 MCF. The volumes indicated above are gross volumes and the revenues shown include interests of royalty owners and overriding royalty owners and do not represent the net interest owned by Seller.

This change in rate schedule is filed under protest and to avoid the penalties provided in Section 21 of the Natural Gas Act. By filing this change in rate schedule, The Texas Company does not admit that it or the sale of gas embraced by the above mentioned contract are subject to regulation by the Commission and The Texas Company hereby expressly reserves not only its legal and equitable rights to contest such regulation but also any and all contractual rights it now has or may in the future have by virtue of the terms and provisions of said contract, whether or not same conflict with or may be contrary to the provisions of any order, rule, regulation, decision or determination that has or may be issued or adopted by the Commission.

[fol. 188] Communications with respect hereto should be sent to:

W. V. Vietti, Division Manager
Gas Division
The Texas Company
P. O. Box 2332
Houston 1, Texas

It is respectfully requested that copies of such communications be sent to:

P. F. Schlicher, Attorney
The Texas Company
135 East 42nd Street
New York 17, New York

and to:

M. L. Terry, Division Manager
Producing Department
The Texas Company
P. O. Box 2420
Tulsa 3, Oklahoma

Respectfully submitted,

THE TEXAS COMPANY

By s/ W. V. VIETTI
W. V. Vietti
Division Manager
Gas Division

[fol. 189]
STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared W. V. Vietti, who, after being duly sworn, on his oath deposed and said:

That he is Division Manager, Gas Division, Producing Department, The Texas Company, and is duly authorized to make this affidavit, that he has read the foregoing, is familiar with the contents thereof, and the facts set forth therein are true and correct to the best of his information, knowledge and belief.

s/ W. V. VIETTI
W. V. Vietti

SUBSCRIBED AND SWORN TO before me this ..... day of .....; 1957.

s/ E. A. COWART
Notary Public in and for
Harris County, Texas

[Vol. 190]

EXHIBIT L-6 TO DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF

FEDERAL POWER COMMISSION

WASHINGTON 25

7/12/57

AIRMAIL

The Texas Company
Post Office Box 2332
Houston 1, Texas

Attention: Mr. W. V. Vietti

Gentlemen:

This is with reference to your tenders of June 13, 1957, submitting for filing proposed rate increases under your FPC Gas Rate Schedules Nos. 68, 69, 70, 72, 98, 99, 100, 106, 107, 108, 109, 110 and 112, to reflect reimbursement to your company for a portion of the Kansas State Severance Tax.

Review of these rate schedules discloses no documents therein as constituting specific authorization of the rate of 11¢ per Mcf at 14.65 psia which was utilized in the Notices of Change. Therefore, your tenders of June 13, 1957 are not acceptable filings at this time.

It is also noted that your FPC Gas Rate Schedules Nos. 68 and 69 contain no evidence that The Texas Company has signatory status to the respective sales contracts by assignment, ratification or otherwise. Inasmuch as Section 154.91(d) of the Commission's Rules, as amended by Order No. 190, does not permit the filing of rate schedules by a party non-signatory to the contract under which his gas is sold, such rate schedules are subject to rejection. However, in order to provide The Texas Company the opportunity to complete these two rate schedules by submission of evidence that may have become available showing that it has acquired the status of a signatory party to the contracts, no action to reject will be taken within ten days from the date of this letter.

Until you file, for each rate schedule, two copies of the KANSAS MINIMUM PRICE ORDER of December 2, 1953, and all papers related thereto exchanged with the buyer as, for example, any agreement by the buyer to pay the related [fol. 191] rate on a contingent or conditional basis, a filing date will not be assigned to your tenders of June 13, and no action will be taken thereon. Please make your reply within ten days of the date of this letter. Failure to reply may result in rejection of your tenders.

Very truly yours,

J. H. GUTRIDE
Secretary

cc: The Texas Company
135 East 42nd Street
New York 17, New York
Attention: P. F. Schlicher, Attorney

The Texas Company
P. O. Box 2420
Tulsa 3, Oklahoma
Attention: Mr. M. L. Terry

[fol. 192]

EXHIBIT L-8 TO DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF

(*Handwritten notation*—Part of Texas letter 9/25/58)

FEDERAL POWER COMMISSION

WASHINGTON 25

JUL 19 1957

AIR MAIL

The Texas Company
Post Office Box 2332
Houston 1, Texas

Attention: Mr. W. V. Vietti

Gentlemen:

In compliance with the request in your telegram of July 16, 1957, an extension of time to August 1, 1957 is hereby granted to furnish the information and documents requested in this Commission's letter dated July 12, 1957. Until receipt thereof, a filing date will not be assigned to the changes in rate proposed by your tenders of June 13, 1957.

Very truly yours,

Secretary
J. H. GUTRIDE

cc: The Texas Company
136 East 42nd Street
New York, New York
Attention: P. F. Schlicher, Attorney

The Texas Company
P. O. Box 2420
Tulsa 3, Oklahoma
Attention: Mr. M. L. Terry

[Stamp illegible]

[fol. 193]

EXHIBIT L-9(1) TO DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF

THE TEXAS COMPANY

TEXACO PETROLEUM PRODUCTS

(Emblem)

PRODUCING DEPARTMENT
GAS DIVISION
W. V. VIETTI, Division Manager

HOUSTON 1, TEXAS

[Date illegible]

CHANGE IN RATE SCHEDULE
The Texas Company
Oklahoma Division
FPC Gas Rate Schedule No. 100
Contract O-1 in Docket No. G-4824

Mr. J. H. Gutride, Secretary
Federal Power Commission
Washington 25, D. C.

Dear Sir:

Reference is made to the Commission's letter of July 12, 1957, concerning, among others, our tender of June 13, 1957, submitting for filing a proposed rate increase under our subject FPC Gas Rate Schedule to reflect reimbursement for a portion of the Kansas State Severance Tax. Pursuant to said July 12, 1957, letter we enc ose herewith for filing with the Commission, the following:

1. Two (2) copies of the State Corporation Commission of the State of Kansas, Conservation Division, Minimum Price Order dated December 2, 1953, Docket No. 44,079-C (C-3216).

Supp. #3

2. Two (2) copies of a letter dated January 21, 1954, from the Buyer, Cities Service Gas Co., setting forth the contingent or conditional basis upon which the minimum rate will be paid.

Supp. #4

Yours very truly,

THE TEXAS COMPANY
PRODUCING DEPARTMENT

By /s/ P. F. SCHLICHER

Enclosures

[fol. 194]

EXHIBIT L-9(8) TO DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF

COPY

CITIES SERVICE GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY 1, OKLAHOMA

January 21, 1954

The Texas Company
P. O. Box 2420
Tulsa, Oklahoma

Gentlemen:

The State Corporation Commission of the State of Kansas by Order dated December 2, 1953, in Docket No. 44079-C (C-3216) directed that on and after January 1, 1954, as a condition precedent for withdrawal of gas from the Hugoton Gas Field in Kansas, there shall be paid therefor or attributed thereto, at the wellhead, a minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.).

Cities Service Gas Company and certain other parties filed Petitions in the District Court of Finney County, Kansas, for a judicial review of the said Order.

Pending final judicial determination of the said Order and beginning January 1, 1954, Cities Service Gas Company intends to pay for all gas purchased by it in the Kansas Hugoton Field in strict compliance with the terms and conditions of the said Order. Such compliance with said Order by this Company, however, is made to avoid the penalties and actions provided by the Kansas statutes for a violation thereof, and the payments made to you in compliance with said Order pending its final judicial determination are to be considered and accepted by you as involuntary payments on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said Order.

In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayment.

Very truly yours,

/s/ G. C. Roth

G. C. Roth
Vice President

GCR:hl

[fol. 195]

EXHIBIT L-10 TO DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF

FEDERAL POWER COMMISSION

WASHINGTON 25

AUG 29 1957

The Texas Company
P. O. Box 2332
Houston 1, Texas

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the rates being charged June 7, 1954, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 174-B. The Act and the Commission's Rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

In future correspondence with the Commission concerning the rate schedules listed below, please refer to the FPC Gas Rate Schedule designation furnished you herewith, including the name of the independent producer and the rate schedule and supplement numbers.

Very truly yours,

/s/ J. H. GUTRIDE
J. H. Gutride
Secretary

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation — *The Texas Company* FPC Gas Rate Schedule No.	Supplement No.
Order 12-2-53	7-29-57	72	3
Letter 2-23-54	7-29-57	72	4
Order 12-2-53	7-29-57	98	2
Letter 2-18-54	7-29-57	98	3
Order 12-2-53	7-29-57	99	2
Letter 4-1-54	7-29-57	99	3
[fol. 196]			
Order 12-2-53	7-29-57	100	3
Letter 1-21-54	7-29-57	100	4
Order 12-2-53	7-29-57	104	4
Letter 2-23-54	7-29-57	104	5
Order 12-2-53	7-29-57	107	4
Letter 2-23-54	7-29-57	107	5
Order 12-2-53	7-29-57	108	4
Letter 2-23-54	7-29-57	108	5
Order 12-2-53	7-29-57	109	4
Letter 2-23-54	7-29-57	109	5
Order 12-2-53	7-29-57	70	2
Order 12-2-53	7-31-57	110	4
Letter 2-23-54	7-31-57	110	5
Order 12-2-53	7-31-57	112	1
Letter 2-23-54	7-31-57	112	2

cc: P. F. Schlicher, Attorney
The Texas Company
135 E. 42nd Street
New York 17, New York

Mr. M. L. Terry
The Texas Company
P. O. Box 2420, Tulsa 3, Oklahoma

[fol. 197]

EXHIBIT L-11 TO DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF

FEDERAL POWER COMMISSION

WASHINGTON 25

The Texas Company
P. O. Box 2332
Houston 1, Texas

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing, that notice is hereby waived and that such rate schedules shall be effective as of the dates shown.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the effective rates and charges, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 174-B. The Act and the Commission's Rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any pro-

ceeding now pending or hereafter instituted by or against your company.

In future correspondence with the Commission concerning the rate schedules listed below, please refer to the FPC Gas Rate Schedule designation furnished you herewith, including the name of the independent producer and the rate schedule and supplement numbers.

By direction of the Commission.

J. H. Gutride
Secretary

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation — *The Texas Company* FPC Gas Rate Schedule No.	Supplement No.	Effective Date
Notice of Change Undated	6-13-57	72	5	7-1-57
Notice of Change Undated	6-13-57	98	4	7-1-57
Notice of Change Undated	6-13-57	99	4	7-1-57
Notice of Change Undated	6-13-57	100	5	7-1-57
Notice of Change Undated	6-13-57	106	6	7-1-57
Notice of Change Undated	6-13-57	107	6	7-1-57
Notice of Change Undated	6-13-57	108	6	7-1-57
[fol. 198]				
Notice of Change Undated	6-13-57	109	6	7-1-57
Notice of Change Undated	6-13-57	70	4	7-1-57
Notice of Change Undated	6-13-57	110	6	7-1-57
Notice of Change Undated	6-13-57	112	3	7-1-57

cc: P. F. Schlicher, Attorney
The Texas Company
135 E. 42nd Street
New York 17, New York

Mr. M. L. Terry
The Texas Company
P. O. Box 2420
Tulsa 3, Oklahoma

[fol. 199] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 200]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

No. 671, Civil Action, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

THE TEXAS COMPANY, a corporation, Defendant.

STIPULATION AND ORDER FOR AMENDMENTS OF COMPLAINT AND ANSWER—Filed December 23, 1958

Counsel for the respective parties, pursuant to Rule 15(a) of this Court, agree:

1. That plaintiff's complaint be hereby amended:

(a) by adding between paragraphs 3 and 4 of the present complaint the following new paragraph:

"3A. The gas purchased by plaintiff from defendant under said Contracts was transported in the plaintiff's interstate gas pipeline system and sold in interstate commerce for resale for ultimate public consumption."; and

(b) by adding between paragraphs 9 and 10 of the present complaint the following new paragraph:

"9A. During such period plaintiff made each monthly payment, based upon said minimum price order, involuntarily and under business compulsion and duress; in order to perform its contracts with its customers; in order to perform its duties to the public, to deliver gas to its customers continuously and un- [fol. 201] interruptedly; in order to avoid the sanctions imposed by Kansas Statutes, as aforesaid; and under compulsion of the minimum price-fixing order. The increased price for gas compelled plaintiff to seek and obtain increased rates for gas delivered to its customers.";

2. That defendant's answer be hereby amended:

(a) by striking the figures "14.65" from the eleventh line on page 5 of the present answer and substituting in lieu thereof the figures "16.4";

(b) by striking the word "remands" from the first line of page 7 of the present answer and substituting in lieu thereof the word "remained";

(c) by adding between paragraphs 3 and 4 of the present answer the following new paragraph:

"3A. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3A, added by amendment between paragraphs 3 and 4 of the original complaint; except that defendant alleges that a large part of all the gas referred to in the complaint—the exact amount being known to plaintiff only—was gas destined never to leave the State of Kansas, but, to be sold and ultimately consumed in intrastate commerce, rather than in interstate commerce."; and

(d) by adding between paragraphs 9 and 10 of the present answer the following new paragraph:

[fol. 202] "9A. Paragraph 9A, added by amendment between paragraphs 9 and 10 of the original complaint, is denied."; and

3. That the answer as amended herein shall constitute a responsive pleading to the complaint as amended herein, and no further answer is required in response to the complaint as amended herein.

John J. Morris, Jr., Howard L. Williams, Delaware Trust Building, Wilmington, Delaware, Attorneys for Plaintiff.

Morris, Nichols, Arsht & Tunnell, James M. Tunnell, Jr., Andrew B. Kirkpatrick, Jr., 3000 duPont Building, Wilmington, Delaware, Attorneys for Defendant.

So Ordered this twenty-second day of December, 1958, Albert J. Stiftel, J.

[fol. 203] [File endorsement omitted]

[fol. 204]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

THE TEXAS COMPANY, a corporation, Defendant.

PLAINTIFF'S REQUESTS FOR ADMISSIONS BY DEFENDANT—
Filed January 19, 1959

Plaintiff requests, pursuant to Rule 36 (a) of this Court, that within ten days after service hereof defendant make the following admissions, subject to the provisions of Rule 36 (b) of this Court:

1. (a) Except for the dots making "3. 1, 54 C N B" and the inverted figures "106356" under the word "Oklahoma", that the writing attached hereto, marked Exhibit "A", is a complete and accurate copy of the face of a voucher check received by defendant from plaintiff.

(b) That defendant placed its endorsement on the reverse side of the voucher check referred to in 1 (a).

(c) That defendant received the proceeds and benefits of the voucher check referred to in 1 (a).

(d) That the writing attached hereto, marked Exhibit "B" is a complete and accurate copy of a letter written by J. H. Johnson of The Texas Company to plaintiff, dated March 2, 1954.

(e) That J. H. Johnson was authorized by defendant to write, in defendant's behalf, the letter referred to in 1 (d).

(f) Excluding the ink description in bottom right-hand corner thereof, that the writings attached hereto, marked

Exhibit "C-1 through 21" are a complete and accurate copy of the gas statements which were received by defendant at the same time defendant received from plaintiff the voucher check referred to in 1 (a).

(g) That the statement on the voucher check referred to in 1 (a) refers to the conditions upon which plaintiff paid [fol. 205] and defendant accepted payment for the volumes of gas shown in Exhibit "C-1 through 21."

(h) That voucher checks similar in purport to the voucher check referred to in 1 (a) were issued by plaintiff and accepted by defendant with reference to monthly volumes of gas delivered by defendant and received by plaintiff during the period January 23, 1954 to November 22, 1957.

(i) That gas statements similar in purport to those shown in Exhibit "C-1 through 21" accompanied each voucher check referred to in 1 (h).

(j) That the change in the price for gas delivered during the period January 1 to January 22, 1954, as compared with the gas delivered during the period December 23, 1953 through December 31, 1953, as shown on the gas statement marked Exhibit C-1 through 20, occurred because the Kansas 11¢ Price Order became effective January 1, 1954.

(k) That defendant was benefited by its receipt of the change in the price of gas required by the Kansas 11¢ Price Order.

(l) That defendant did not object or protest in writing to plaintiff concerning the content of the letter from plaintiff to defendant dated January 21, 1954, a copy of which is attached to Defendant's Requests to Plaintiff for Admissions, marked Exhibit "L(9)-8."

(m) That the January 21, 1954 letter referred to in 1 (l) as being marked Exhibit "L (9) -8" is the same January 21, 1954 letter referred to in the statement on the voucher part of the check referred to in 1 (a) and is the same letter referred to in the statement on the voucher

part of subsequent voucher checks issued by plaintiff to defendant relating to gas covered by the three contracts involved in this action.

(n) That defendant did not object or protest in writing to plaintiff concerning either the statement upon the voucher part of the check referred to in 1 (a) or to a similar statement appearing upon any subsequent voucher check issued by plaintiff to defendant during the period covered by the Amended Complaint.

2. (a) That defendant's Federal Power Commission Rate Schedules 68 and 69, Docket No. G-4824, have been rejected and canceled by the Federal Power Commission.

(b) That the Federal Power Commission has not ac-
[fol. 206] cepted rate filings by defendant in place of such rejected and canceled Rate Schedules 68 and 69.

(c) That the Federal Power Commission has vacated defendant's Certificate of Public Convenience and Necessity relating to the sales of gas under Defendant's Rate Schedules 68 and 69, Docket No. G-4824.

(d) That the Federal Power Commission has not issued to defendant a Certificate or Certificates of Public Convenience and Necessity in place of such vacated Certificate.

3. That a true, complete and accurate copy of Sections 55-708, 709 and 710, General Statutes of Kansas, 1949, is attached to Plaintiff's Amended Complaint and marked Exhibit "D".

4. (a) That the following statement appeared upon each voucher check received and accepted by defendant during the period January 1, 1954 to November 22, 1957, namely:

> "In full settlement of gas purchased for the period ending (appropriate date here inserted on each check), subject to the provisions of letters dated August 25, 1953 and January 21, 1954, with reference to gas purchased in Kansas."

(b) That defendant has not filed the statement referred to in 4 (a), or a copy thereof, with Federal Power Commis-

sion in connection with any of its filings with that Commission relating to the gas covered by any of the three contracts involved in this action.

5. (a) That the gas price of 11¢ per Mcf measured at 14.65 p.s.i.a. received by defendant during the period covered by the Amended Complaint was a price ordered by the Kansas Corporation Commission by its 11¢ Price Order.

(b) That the gas price of 11¢ per Mcf measured at 14.65 p.s.i.a. received by defendant during the period covered by the Amended Complaint was not a price for gas negotiated between plaintiff and defendant.

(c) That the gas price of 11¢ per Mcf measured at 14.65 p.s.i.a. received by defendant during the period covered by the Amended Complaint is not a weighted average of prices for Kansas-Hugoton gas paid by plaintiff to others pursuant to gas purchase contract negotiated between plaintiff and others.

6. (a) That the following respective volumes of gas measured at 14.65 deviated and price at 11¢ per Mcf, would have the value in money equal to that set out opposite each such rate, namely:

[fol. 207]

Volumes	*Value in Money*
3,250,331	$357,536.41
6,859,133	754,504.63
471,643	51,880.73

(b) That the following respective volumes of gas measured at 16.4 as provided in the June 16, 1949 Contract, priced at the rate per Mcf as set out opposite each such volume, would have a value in money equal to that set out opposite each such rate, namely:

Volumes	*Rate*	*Value in Money*
31,268	7.9480¢	$ 2,485.18
102,706	7.8351¢	8,047.12
98,938	7.8544¢	7,770.99
25,932	7.8555¢	2,037.09
2,581,809	8.0101¢	206,805.48
77,641	7.9480¢	$ 6,170.91
244,566	7.8351¢	19,161.99
206,278	7.8544¢	16,201.90
92,452	7.8555¢	7,262.57
5,359,371	8.0101¢	429,281.97
8,740	7.9480¢	$ 694.66
22,769	7.8351¢	1,783.79
13,091	7.8544¢	1,028.22
3,650	7.8555¢	286.73
363,842	8.0101¢	29,144.11

(c) That when measured in British Thermal Units, as provided in the June 16, 1949 Contract, the gas produced and delivered to plaintiff from the following wells during the period covered by the Amended Complaint had the heating value, respectively, set out opposite each such well, namely:

Well Name	*Station No.*	*BTU Heating Value*
Pruitt #1	5719	961
Packer #1	5720	949
Wheeler #1	5721	926
T. Skinner #1	5722	965
Schweitzer #1	5723	948
Rittenour	5727	942

[fol. 208] (d) That the gas produced from a respective well referred to in 6 (c) was measured through a meter bearing the station number, respectively, set out opposite the name of each such well in 6 (c) and that all such wells are located in what is commonly called "Pleasant Valley Block."

(e) That for the purposes of the matters involved in this action, the heating value of the gas produced from the wells referred to in 6 (c) was unchanged during the period covered by the Amended Complaint.

7. (a) That the writing attached hereto marked Exhibit "E" is a complete and accurate copy of a letter written by H. F. Johnson of The Texas Company to Columbian Fuel Corporation dated July 30, 1957.

(b) That H. F. Johnson was authorized by defendant to write, in defendant's behalf, the letter referred to in 7 (a).

(c) That the writing hereto attached marked Exhibit "F" is a complete and accurate copy of a letter dated August 2, 1957, received by defendant from Columbian Fuel Corporation.

(d) That the writing hereto attached marked Exhibit "G" is a complete and accurate copy of a letter dated August 9, 1957, received by defendant from plaintiff.

(e) That the proceeds accruing to the full eight-eighths interest in gas purchased by plaintiff under the June 16, 1949 Contract for the period June 23, 1957 through November 22, 1957 were pursuant to the letters referred to in 7 (a), (c), and (d) received by defendant.

8. (a) That the writing attached hereto marked Exhibit "H" is a complete and accurate copy of a letter dated July 12, 1957, received by and addressed to defendant and written by J. H. Gutride, Secretary, Federal Power Commission.

(b) That the writing attached hereto marked Exhibit "I" is a complete and accurate copy of letter written by Paul F. Schlicher of defendant, dated July 29, 1957, addressed to J. H. Gutride, Secretary, Federal Power Commission, Washington 25, D. C.

(c) That Paul F. Schlicher was authorized by defendant to write, on behalf of defendant, the letter referred to in 8 (b).

(c) That the letter referred to in 8 (b) was written in response to the letter referred to in 8 (a).

(e) That, until July 31, 1957, the 11¢ Minimum Price [fol. 209] Order of the State Corporation Commission of Kansas, dated December 2, 1953, Docket No. 44,079-C (C-3216) was not filed by defendant with Federal Power Commission in Defendant's F.P.C. Rate Schedule No. 100.

(f) That the writing attached hereto marked Exhibit "J" is a complete and accurate copy of letter received by and addressed to defendant dated May 15, 1958, from Federal Power Commission pertaining to Defendant's F.P.C. Rate Schedules Nos. 68 and 69.

9. That defendant has not filed with the Federal Power Commission, in connection with any of its filings with that Commission related to the gas involved in this action, the following:

1. The Kansas Pressure Base Order, dated May 20, 1953, effective July 1, 1953, issued by the Kansas State Corporation Commission, in its Docket No. 34,780-C (C-1825).

2. The July 17, 1953 letter, a true and correct copy of which is marked Exhibit "D" and attached to Defendant's Requests for Admissions by Plaintiff.

3. The August 25, 1953 letter, a true and correct copy of which is marked Exhibit "E" and attached to Defendant's Requests for Admissions by Plaintiff.

4. The statement referred to in 4 (a) contained on each voucher check there referred to.

10. That the writing attached hereto, marked Exhibit "K", is a complete and accurate copy of Order of the State Corporation Commission, State of Kansas, Docket No. 34,780-C (C-1825) issued May 20, 1953, effective July 1, 1953.

John J. Morris, Howard L. Williams, Of: Morris, James, Hitchens & Williams, 701 Bank of Delaware Building, Wilmington, Delaware, Attorneys for Plaintiff.

C. C. Mount, O. R. Stites, Gordon J. Quilter, First National Building, Oklahoma City, Oklahoma, Of Counsel.

[fol. 210]

EXHIBIT A TO PLAINTIFF'S REQUESTS FOR ADMISSIONS BY DEFENDANT

V. R. 2-24-54 C. R.

CITIES SERVICE GAS COMPANY

OKLAHOMA CITY, OKLAHOMA

In full settlement of gas purchased for the period ending 1-22-54, subject to provisions of letters dated 8-25-53, and 1-21-54 with reference to gas purchased in Kansas. 18,444.17

VOUCHER NO.

CITIES SERVICE GAS COMPANY

OKLAHOMA CITY, OKLA.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK
1-74 NEW YORK, N. Y.

FEB 25 1954

CHECK NO. 12586

106356

PAY EIGHTEEN THOUSAND FOUR HUNDRED FORTY FOUR AND 17/100 $18,444.17

IN FULL SETTLEMENT OF ACCOUNT AS SHOWN IN ACCOMPANYING VOUCHER

TO THE ORDER OF

THE TEXAS COMPANY
P. O. BOX 2420
TULSA, OKLAHOMA

CITIES SERVICE GAS COMPANY

/s/ C. J. MARTIN
/s/ (Illegible)

COUNTERSIGNATURE REQUIRED WHEN DRAWN FOR MORE THAN $200.00

[fol. 211]

EXHIBIT B TO PLAINTIFF'S REQUESTS FOR ADMISSIONS BY DEFENDANT

THE TEXAS COMPANY

TEXACO PETROLEUM PRODUCTS

(Emblem)

PRODUCING DEPARTMENT
OKLAHOMA DIVISION
J. H. JOHNSON
SUPERINTENDENT, GAS AND GASOLINE PLANTS

P. O. BOX 2420
TULSA 2, OKLAHOMA

March 2, 1954

Cities Service Gas Company
First National Building
Oklahoma City 1, Oklahoma

Gentlemen:

We have your check No. 12586 dated February 25, 1954, in the amount of $18,444.17 covering gas purchases for the month of January.

Included in this remittance was an amount of $65.96 covering The Texas Company's interest in gas from the Texas-Skelly State No. 1, NE/4 Section 2-1N-11 ECM, Texas County, Oklahoma. Payment for gas from this property should be made to us addressed to Box 1720, Fort Worth, Texas, and we will appreciate it if you will change your records so that they will receive subsequent payments for such gas.

Yours very truly,

THE TEXAS COMPANY
PRODUCING DEPARTMENT

By /s/ J. H. JOHNSON
J. HOWARD JOHNSON

GLP:BW

[fol. 212] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 213]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

THE TEXAS COMPANY, a corporation, Defendant.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT—
Filed January 30, 1959

Defendant hereby moves for summary judgment and for an order fixing an affidavit and brief schedule thereon.

The grounds for this motion for summary judgment are that:

1. During the period from January 1, 1954, to July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was fixed by a regulation of the State of Kansas, and plaintiff does not base its claim upon that regulation;

2. During the period after July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was fixed by a rate filed with and accepted by the Federal Power Commission, under its regulations prescribed under the Natural Gas Act, 15 U.S.C.A. §§ 717(a), *et seq.*, and plaintiff does not base its claim upon that filed rate; and,

[fol. 214] 3. If the Kansas regulation had not been in effect from January 1, 1954, to July 16, 1954, or if thereafter defendant had had no rate on file with the Federal Power Commission, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, would have been that prescribed by the Natural Gas Act, 15 U.S.C.A. §§ 717(a), *et seq.*, and plaintiff does not base its claim upon that Act.

This motion for summary judgment is based upon the facts established by the pleadings, plaintiff's answers to defendant's interrogatories, plaintiff's responses to defendant's requests for admissions, affidavits to be filed in support hereof, and such other affidavits as are filed herein pursuant to the schedule fixed by the order entered on this motion.

Morris, Nichols, Arsht & Tunnell, James M. Tunnell, Jr., Andrew B. Kirkpatrick, Jr., Attorneys for Defendant, 3000 duPont Building, Wilmington, Delaware.

Of Counsel: Paul F. Schlicher, 24th Floor Chrysler Bldg., 135 East 42nd Street, New York, New York.

[fol. 215] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 216]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—vs.—

THE TEXAS COMPANY, a corporation, Defendant.

AFFIDAVIT OF ANDREW B. KIRKPATRICK, JR.—
Filed February 9, 1959

Andrew B. Kirkpatrick, Jr., being duly sworn, deposes and says:

The text of each of the following documents is a true and accurate copy of the text of documents in the files of the Federal Power Commission:

1. Exhibits A through D hereof;

2. Exhibits L-1 and L-1(2) of defendant's requests for admissions served herein on November 24, 1958 (hereinafter "defendant's requests"); exhibits L-2 page 1 through L-2 page 4 of defendant's requests; exhibits L-3 and L-3(2) through L-3(17) of defendant's requests; copy of letter dated September 8, 1949 and attached as part of exhibit A of the answer herein; copy of 10 page "Gas Purchase Contract" attached as part of exhibit A of the answer herein, and exhibits A, A(2), and A(3) of defendant's requests; exhibits L(4)(1) through L(4)(5) of defendant's requests; exhibit L-5(1) of defendant's requests, except that in the Federal Power Commission files the number "5" after "Supplement No." has been marked out and the number "3" has been inserted; exhibits L-5(3) through L-5(7) of defendant's requests, except that the number "5" after "Supplement No." has been marked out and the number "3" has been [fol. 217] inserted in the document in the files of the Federal Power Commission of which exhibits L-5(3) and L-5(4) of defendant's requests are copies; exhibits L-6 and L-6(2) of defendant's requests, exhibit L-7 of defendant's requests, exhibit L-8 of defendant's requests; exhibit L-9 of defendant's requests; exhibits L-9(2) through L-9(7) of defendant's requests; exhibit L-9(8) of defendant's requests, exhibits L-10(1) and L-10(2) of defendant's requests, and exhibits L-11(1) and L-11(2) of defendant's requests;

3. Exhibits E through I hereof; exhibits L-4(1) through L-4(5) of defendant's requests; exhibit J hereof; exhibits L-6 and L-6(2) of defendant's requests; exhibit L-7 of defendant's requests; exhibit L-8 of defendant's requests; exhibits K through N hereof; and exhibit D hereof;

4. Exhibits O through S hereof; exhibits L-4(1) through L-4(5) of defendant's requests; exhibit T hereof; exhibits L-6 and L-6(2) of defendant's requests; exhibit L-7 of defendant's requests; exhibit L-8 of defendant's requests; exhibits K through N hereof; and exhibit D hereof;

5. Exhibits U through W hereof;

6. Exhibits X through Z hereof and exhibits AA through AF hereof;

7. Exhibit AG hereof; and,

8. Exhibit AH hereof; exhibit C of the Answer herein, except that the document in the files of the Federal Power Commission of which this is a copy is dated in the first line the "8th day of March"; exhibits AI through AZ hereof; and exhibits BA and BB hereof.

Andrew B. Kirkpatrick, Jr.

Sworn to and subscribed before me the 6th day of February, 1959.

Evelyn P. Cashell, Notary Public.

(Seal)

[fol. 218]

EXHIBIT A TO AFFIDAVIT

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

The Texas Company
Producing Department
Oklahoma Division

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[fol. 219]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of	)	
	)	Docket No. G-4824
The Texas Company	)	

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FILED PURSUANT TO ORDER NO. 174-A

Comes Now The Texas Company and files this its application for a certificate of public convenience and neces-

sity pursuant to Section 157.23(a), Sub-Chapter E, Regulations under the Natural Gas Act, for the sale of gas to the several companies as more fully described under the several designations in the subdivisions of Section 4 hereof.

It also applies hereby for such a certificate on behalf of those persons who have authorized such action and whose names appear in Exhibit "A" attached hereto and made a part hereof.

1.

The exact legal name of Applicant is The Texas Company and it is organized under the laws of the State of Delaware, has a principal place of business in the City of Houston, Texas and is authorized to do business in all [fol. 220] forty-eight (48) states and the District of Columbia.

2.

It has no predecessor in interest engaged in the transportation or sale of natural gas on June 7, 1954.

3.

The name, title and post office address of the persons to whom correspondence or communications in regard to this application is to be addressed is:

W. V. Vietti, Division Manager
Gas Division
The Texas Company
P. O. Box 2332
Houston 1, Texas

It is respectfully requested that copies of such correspondence or communications be sent to:

Paul F. Schlicher, Attorney
The Texas Company
135 East 42nd Street
New York 17, New York

and to:

M. L. Terry, Division Manager
Producing Department
The Texas Company
P. O. Box 2420
Tulsa 2, Oklahoma

[fol. 221]

4.

CONTRACT No. O-1

Applicant entered into a contract with Cities Service Gas Company dated the 16th day of June, 1949, covering the sale of gas from Applicant's leases in the Hugoton Field, Stevens County, Kansas. Deliveries were being made under subject contract on June 7, 1954. Applicant is informed by the purchasing company that such gas is ultimately transported in interstate commerce.

(i) The sources of gas produced by Applicant are from Applicant's leases in its Moscow and Pleasant Valley blocks in the Hugoton Field, Stevens County, Kansas, as shown on Part 1 of Exhibit "B" which is attached hereto and made a part hereof.

The gas produced from the Moscow and Pleasant Valley blocks in the Hugoton Field, Stevens County, Kansas is delivered at the side gate of the well head as shown on Part 1 of Exhibit "B".

(ii) Applicant has no gas lines.

(iii) No communities were served or proposed to be served on June 7, 1954.

(iv) There are no main line industrial customers.

(v) There are no major appurtenant properties or facilities.

[fol. 222]

CONTRACT No. O-2

Applicant made arrangements with Cities Service Gas Company as evidenced by letter dated the 17th day of December, 1951, for the sale of gas from Applicant's leases in the Hugoton Field, Seward County, Kansas, on a day-to-day basis. Deliveries were being made under said arrange-

ment on June 7, 1954. Applicant is informed by the purchasing company that such gas is ultimately transported in interstate commerce.

(i) The sources of gas produced by Applicant are from Applicant's leases in the Hacker-Engel and Shorb-Engel Gas Units in the Hugoton Field, Seward County, Kansas, as shown on Part 1 of Exhibit "B" which is attached hereto and made a part hereof.

The gas produced from the Hacker-Engel and Shorb-Engel Gas Units in the Hugoton Field, Seward County, Kansas is delivered at the side gate of the well head as shown on Part 1 of Exhibit "B".

(ii) Applicant has no gas lines.

(iii) No communities were served or proposed to be served on June 7, 1954.

(iv) There are no main line industrial customers.

(v) There are no major appurtenant properties or facilities.

[fol. 223] CONTRACT No. O 3

Applicant made arrangements with Cities Service Gas Company as evidenced by letter dated the 20th day of December, 1951, for the sale of gas from Applicant's lease in the Hugoton Field, Grant County, Kansas, on a day-to-day basis. Deliveries were not being made under subject contract on June 7, 1954, due to an over production of allowables, but will be resumed subsequently. Applicant is informed by the purchasing company that such gas is ultimately transported in interstate commerce.

(i) The sources of gas produced by Applicant is from Applicant's lease in the Loewen Gas Unit in the Hugoton Field, Grant County, Kansas as shown on Part 1 of Exhibit "B" which is attached hereto and made a part hereof.

The gas produced from the Loewen Gas Unit in the Hugoton Field, Grant County, Kansas, is delivered at the side gate of the well head as shown on Part 1 of Exhibit "B".

(ii) Applicant has no gas lines.

(iii). No communities were served or proposed to be served on June 7, 1954.

(iv) There are no main line industrial customers.

(v) There are no major appurtenant properties or facilities.

5.

[fol. 224] This application is made under protest and to avoid the penalties provided in Section 21 of the Natural Gas Act. It is also made subject to Applicant's Application for Rehearing in respect to Order 174-A, filed August 25, 1954, Federal Power Commission Docket R-138, any and all resulting decisions, determinations, proceedings, orders, rules, or regulations, and any judicial appeals therefrom or reviews thereof. By filing this application, Applicant does not admit that it or the sales of gas embraced by the above-mentioned contract is subject to regulation by the Commission and Applicant hereby expressly reserves not only its legal and equitable rights to contest such regulation but also any and all contractual rights it now has or may in the future have by virtue of the terms and provisions of said contract, whether or not same conflict with or may be contrary to the provisions of any order, rule, regulation, decision or determination that has or may be issued or adopted by the Commission.

6.

Applicant's description or showing of any facilities in this application or in any Exhibit attached hereto is intended [fol. 225] only for the information of the Commission, and not for the purpose of requesting a certificate of public convenience and necessity for the construction or operation of such facilities. All such facilities constitute, in the opinion of the Applicant, facilities for the production and/or gathering of natural gas within the meaning of Section 1 (b) of the Natural Gas Act whether or not Applicant is a natural gas company and, therefore, no certificate of public convenience and necessity is required or is sought for such facilities. Application is hereby made only for a certificate of public convenience and necessity authorizing

the sale of natural gas in the circumstances above described.

WHEREFORE, subject to the foregoing, Applicant respectfully requests that it be issued a certificate of public convenience and necessity authorizing it to make and continue the sales under the contracts hereinabove referred to.

Respectfully submitted,

THE TEXAS COMPANY

By /s/ W. V. VIETTI
W. V. Vietti
Division Manager
Gas Division

[fol. 226]

THE STATE OF TEXAS)
COUNTY OF HARRIS)

BEFORE ME, the undersigned authority, on this day personally appeared W. V. Vietti, who being by me first duly sworn, on oath deposes and says:

That he is Division Manager, Gas Division, Producing Department of The Texas Company and is duly authorized to make this affidavit; that he has read the foregoing Application, is familiar with the contents thereof, has examined the Exhibits attached thereto and that the facts and allegations contained in the Application and shown on the Exhibits are true and correct to the best of his information, knowledge and belief.

/s/ W. V. VIETTI,

SUBSCRIBED AND SWORN TO before me this the ..... day of Oct 19, 1954.

E. A. COWART
Notary Public in and for
Harris County, Texas

[fol. 227]

EXHIBIT B TO AFFIDAVIT

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, Frederick Stueck and William R. Connole.

In the Matter of)
) Docket Nos. G-4820
) through G-4824
The Texas Company)

FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND DISMISSING APPLICATIONS IN PART

The Texas Company (Applicant), a Delaware corporation and independent producer with its principal place of business in Houston, Texas, filed, on November 12, 1954, as amended July 5, 1955, with respect to Docket Nos. G-4820, G-4821 and G-4822, and on November 14, 1955, with respect to Docket No. G-4820, the above-listed five applications for certificates of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act, authorizing the acts or operations hereinafter described. Said acts or operations were performed on June 7, 1954, with the possible exception of the sale in Contract L-1 in Docket No. G-4821, and have been performed continuously since that date unless otherwise noted. Applicant has filed such applications on its behalf only, and not as representative for any other person.

As a preliminary matter, it is noted that a number of the sales set forth in four of the applications involve materially similar circumstances in which Applicant owns an interest in acreage productive of natural gas, but does not operate such properties, does not take its share of the gas in kind or has not entered into a gas-sales contract for the sale of its share of the gas, and therefore the operator markets Applicant's share of the gas produced. Under the decision in *Humble Oil & Refining Company*, Docket Nos. G-6753, *et al.*, issued March 10, 1955, an application requesting a certificate for the sale of gas marketed under the above-

described circumstances must be dismissed. Motion to dismiss with respect to six of such transactions upon jurisdictional grounds were denied by order issued herein November 8, 1955. Accordingly, that part of the application in Docket No. G-4820 which sets forth the sales designated by the Applicant as Contracts S-16, S-17, S-18, S-19, S-25 and S-27, that part of the application in Docket No. G-4821 which sets forth the sales designated by the Applicant as Contracts L-3, L-4, L-5 and L-6, that part of the application in Docket No. G-4822 which sets forth the sale designated by the Applicant as Contract L-14, and that part of the application in Docket No. G-4824 which sets forth the sales designated by the Applicant as Contracts O-4 and O-13 will be dismissed as hereinafter ordered.

[fol. 228] With respect to the sale designated by the Applicant as Contract S-21 in Docket No. G-4820, concerning deliveries of gas to Texas Eastern Transmission Corporation from jointly owned property in the North Hostetter Field, McMullen County, Texas, wherein Applicant was neither the operator nor a party to a gas-sales contract, by an amended filing Applicant shows that it has now entered into a sales contract dated June 6, 1955, with Texas Eastern Transmission Corporation for the disposition of such gas. This contract is in the form of an amendment to Contract S-10, hereinafter set forth. Applicant seeks to withdraw that part of its application in Docket No. G-4820 denominated Contract S-21. Rather it appears more appropriate to dismiss this portion of the application in Docket No. G-4820 under the rule in the *Humble* order, and include deliveries made under the June 6, 1955, amended contract under Contract S-10. With reference to the sales designated Contract O-19 and O-20 in Docket No. G-4824 involving deliveries of gas to Colorado Interstate Gas Company from properties in the Greenwood Field, Morton County, Kansas, Applicant has been issued a certificate of public convenience and necessity on May 24, 1955, in Docket No. G-8087 covering these and other deliveries of gas to Colorado Interstate Gas Company. Since deliveries previous to such authorization were made by the unit operator under an agreement to which Applicant was not a party, that part of the application in Docket No. G-4824 designated Contracts O-19 and O-20 should be dismissed under the rule in the *Humble* order.

In Docket No. G-4820 Applicant sells natural gas as follows, all in the State Texas:

Rate Schedule Number	Name of Purchasing Company	Date of Contract	Field	County
	Tennessee Gas Transmission Company	11-11-53	Ace	Polk
	Tennessee Gas Transmission Company	6-12-52	Edinburg	Hidalgo
	Tennessee Gas Transmission Company	8- 1-50	Government Wells	Duval
	Tennessee Gas Transmission Company	4- 1-52	Hagist Ranch	Duval
	Tennessee Gas Transmission Company	4- 1-52	Hagist Ranch	Duval
	Tennessee Gas Transmission Company	10- 2-50	La Reforma	Starr
229	Tennessee Gas Transmission Company	6-12-52	Raymondville	Willacy
	Tennessee Gas Transmission Company	6-10-53	Santellana	Hidalgo
	Texas Eastern Transmission Corporation	6-20-53	Holzmark-Wilcox	Bee
	Texas Eastern Transmission Corporation	6-20-53 & 6- 6-55	Ragsdale and North Hostetter	Bee and McMullen
	Texas Eastern Transmission Corporation	6- 1-53	Rudman and West Cosden	Bee
	Texas Eastern Transmission Corporation	4- 1-52	San Domingo	Bee

Applicant's Contract Number	Name of Purchasing Company	Date of Contract	Field	County
S-13	Texas Eastern Transmission Corporation	4- 1-53	San Domingo	Bee
S-14	Texas Eastern Transmission Corporation	10-23-53	South Cottonwood Creek	DeWitt
S-15	Texas Illinois Natural Gas Pipe Line Company	1-23-50	Old Ocean	Matagorda Brazoria
S-20	Tennessee Gas Transmission Company	4-24-54	Chesterville	Colorado
S-22	United Gas Pipe Line Company	11- 9-50	Weesatche	Goliad
S-23	Transcontinental Gas Pipe Line Corporation	9-12-47	La Gloria	Jim Wells
S-24	Texas Illinois Natural Gas Pipeline Company	1-25-50	La Gloria	Jim Wells
S-26	Tennessee Gas Transmission Company	1-14-55	South Deckers Prairie	Montgomery

[fol. 230] With reference to Applicant's Contracts S-20 and S-26 in Docket No. G4820, at the time the application was filed Applicant was neither the operator nor a party to a gas-sales contract involving the properties jointly owned, but has since entered into sales contracts as listed above.

In Docket No. G-4821 Applicant sells natural gas as follows, all in the State of Louisiana:

plicant's ntract umber	Name of Purchasing Company	Date of Contract	Field	Parish
1	United Gas Pipe Line Company	6- 1-54	Duck Lake	St. Martin and St. Mary
2	United Gas Pipe Line Company	6-11-52	Houma	Terrebonne
7	United Gas Pipe Line Company	4-29-52	Lisbon	Claiborne
9	Atlantic Refining Company	7-13-51	Bayou Sale	St. Mary
10	Magnolia Petroleum Company	9-19-52	East Mud Lake	Cameron

In Docket No. G-4821, Applicant's Contracts L-9 and L-10, Applicant states that these sales to Atlantic Refining Company and Magnolia Petroleum Company were entered into for only an interim period, after which time Applicant would sell the gas produced to United Fuel Gas Company. On October 28, 1954, Applicant was issued a certificate of public convenience and necessity in Docket Nos. G-3645 and G-3643 covering such proposed sales. Therefore, the authorizations hereinafter granted with respect to Contracts L-9 and L-10 cover only that period of time until deliveries to United Fuel Gas Company began on November 1, 1954.

In Docket No. G-4822, Applicant sells natural gas produced on acreage located in the Bethany Field, Panola County, Texas, and Caddo Parish, Louisiana, to United Gas Pipe Line Company under the terms of a contract dated March 13, 1951 (Applicant's Contract L-12) and also sells natural gas produced on acreage located in the Carthage Field, Panola County, Texas, to Texas Gas Transmission Corporation under the terms of a contract dated July 1, 1952 (Applicant's Contract L-13).

In Docket No. G-4823, Applicant sells natural gas produced on acreage located in the Baxterville Field, Lamar and Marion Counties, Mississippi, to United Gas Pipe

Line Company under the terms of a contract dated April 3, 1950 (Applicant's Contract L-11).

[fol. 231] In Docket No. G-4824, Applicant sells natural gas as follows, all in the State of Kansas with the exception of the last three sales which are made in the State of Oklahoma:

Applicant's Contract Number	Name of Purchasing Company	Date of Contract	Field	County
O-1	Cities Service Gas Company	6-16-49	Hugoton	Stevens
O-2	Cities Service Gas Company	12-17-51 (Letter Agreement)	Hugoton	Sewart
O-3	Cities Service Gas Company	12-20-51 (Letter Agreement)	Hugoton	Grant
O-5	Hugoton Plains Gas and Oil Company	8- 3-51	Hugoton	Sewart
O-6	Kansas-Nebraska Natural Gas Company	9-19-52	Hugoton	Kearny
O-7	Kansas-Nebraska Natural Gas Company	Division Order	Hugoton	Finney
O-8	Northern Natural Gas Company	1-20-53	Hugoton	Stevens
O-9	Northern Natural Gas Company	5-23-45	Hugoton	Stevens
O-10	Northern Natural Gas Company	5-18-50	Hugoton	Seward
O-11	Northern Natural Gas Company	11-18-52	Hugoton	Morton
O-12	Northern Natural Gas Company	10-22-52	Hugoton	Morton
O-14	Northern Natural Gas Company	9-22-50	Hugoton	Seward
O-15	Northern Natural Gas Company	6- 8-53	Hugoton	Morton

fol. 232]

Applicant's Contract Number	Name of Purchasing Company	Date of Contract	Field	County
O-16	Northern Natural Gas Company	10- 1-50	Hugoton	Haskell
O-17	Panhandle Eastern Pipe Line Company	Pending	Hugoton	Morton
O-18	Panhandle Eastern Pipe Line Company	5-15-50	Hugoton	Morton
O-21	Lone Star Gas Company	5-26-41	Doyle	Stephens
O-22	Lone Star Gas Company	6-25-47	Doyle	Stephens
O-23	Lone Star Gas Company	4-26-48	Doyle	Stephens

Applicant's Contract O-17, above, involves a situation wherein Panhandle Eastern Pipe Line Company is the unit operator as well as the purchaser of the gas involved. Since Panhandle is not required to obtain a certificate for a sale to itself or for the disposition of Applicant's gas, it is necessary that Applicant obtain a certificate for such transaction.

By an order issued October 5, 1955, certain petitions to intervene in this proceeding were permitted and certain others denied. Motions to dismiss upon jurisdictional grounds with respect to several of the transactions involved were denied by order issued herein on November 8, 1955.

Pursuant to due notice a public hearing was held in Washington, D. C., on June 29, July 27, September 21 and November 23, 1955, respecting the matters involved in and the issues presented by the application.

The Commission *finds*:

(1) That part of the application in Docket No. G-4820 consisting of the sales designated as Contracts S-16,

S-17, S-18, S-19, S-21, S-25 and S-27, that part of the application in Docket No. G-4821 consisting of the sales designated as Contracts L-3, L-4, L-5 and L-6, that part of the application in Docket No. G-4822 consisting of the sale designated as Contract L-14 and that part of the application in Docket No. G-4824 consisting of the sales designated as Contracts O-4, O-13, O-19 and O-20 should be dismissed for the reasons set forth in the order in *In the Matter of Humble Oil & Refining Company,* Docket Nos. G-6753, *et al.*, issued March 10, 1955.

[fol. 233] (2) Applicant, an independent producer of natural gas, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The sales of natural gas hereinbefore described, as more fully described in the applications, are ..a le in interstate commerce, subject to the jurisdiction of the Commission, and such sales by Applicant, together with the operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) The sales of natural gas by Applicant, together with the operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(6) A request during the public hearing by Staff Counsel for omission of the intermediate decision procedure

under Section 1.30(c)(2) of the Commission's Rules of Practice and Proce[illegible] was opposed by the interveners Sun Oil Company and Hassie Hunt Trust; however, the record in this proceeding demonstrates that due and timely execution of Commission functions imperatively and unavoidably requires that the intermediate decision procedure be omitted in this proceeding as hereinafter ordered and that the Commission render a decision in this proceeding.

The Commission *orders*:

(A) The intermediate decision procedure be and it is hereby omitted herein in accordance with the provisions of Section 1.30 (18 CFR 1.30) of the Commission's Rules of Practice and Procedure.

(B) That part of the application in Docket No. G-4820 consisting of the sales designated as Contracts S-16, S-17, S-18, S-19, S-21, S-25 and S-27, that part of the application in Docket No. G-4821 consisting of the sales designated as Contracts L-3, L-4, L-5 and L-6, that part of the application in Docket No. G-4822 consisting of the sale designated as Contract [fol. 234] L-14 and that part of the application in Docket No. G-4824 consisting of the sales designated as Contracts O-4, O-13, O-19 and O-20 be and are hereby dismissed for the reasons set forth in the order in *In the Matter of Humble Oil & Refining Company*, Docket Nos. G-6753, *et al.*, issued March 10, 1955.

(C) Certificates of public convenience and necessity be and are hereby issued, upon the terms and conditions of this order, authorizing the sales by Applicant of natural gas in interstate commerce for resale, together with the continued operation of any facilities, subject to the jurisdiction of the Commission, used for such sales of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits in this proceeding.

(D) The certificates shall be accepted in writing and under oath by Applicant within 30 days from the issuance of this order.

(E) The certificates are not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission.

(F) The grant of the several certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Section 154 of the Commission's Rules and Regulations thereunder requiring the filing of rate schedules for the services herein authorized; and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objection relating to the operation of any price or related provision in the gas purchase contracts herein involved.

By the Commission.

Leon M. Fuquay,
Secretary.

Adopted: November 30, 1955

Issued: December 5, 1955

[fol. 235]

In the Matter of)
) Docket Nos. G-4820
) through G-4824
The Texas Company)

DIGBY, Commissioner, *concurring*:

I concur in the order granting a certificate of public convenience and necessity to sell natural gas. I object to any reference in the order concerning the issuance of a certificate of public convenience and necessity for the facilities of the independent producer or gatherer of gas.

A certificate of public convenience and necessity is neither required nor properly issued for construction and operation of facilities of a producer or gatherer. The action of a majority of this Commission issuing a certificate for facilities is improper for it represents an assertion of power denied to us by Congress.

We have recognized the absence of power over facilities when, in Order No. 174 and Order No. 174-A, we failed to provide any procedure whereby application could be made for a certificate authorizing their construction and operation. We did promulgate procedural rules to enable filing of applications for certificates authorizing a sale or transportation. There was not even a suggestion that at some later time we would authorize or require authorization for construction and operation of facilities.

The action heretofore taken, insofar as it made no provision with respect to facilities, was wholly consistent with the declarations of the Supreme Court in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Company*, 337 U. S. 498, 505; *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U. S. 581, 598; *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U. S. 682, 690-691, and *Phillips Petroleum Company* v. *State of Wisconsin*, 74 Sup. Ct. 794, 797-798. The language of the Court in these cases is clear and unambiguous. In *Federal Power Commission* v. *Panhandle Eastern Pipe Line Company*, *supra*, the Court stated that the "natural and clear mean-

ing" of production or gathering contained in Section 1(b) of the Act encompassed "the producing properties and gathering facilities of a natural-gas company." In *Colorado Interstate Gas Co.* v. *Federal Power Commission, supra,* the Court stated that the production or gathering exemption applies to the "physical activities, facilities and properties used in the production and gathering of natural gas." In *Interstate Natural Gas Company* v. *Federal Power Commission, supra,* the Court stated that effect must be given to the exemption of producing and gathering, and indicated clearly that facilities, properties and activities of a producer and gatherer were exempted. The Court, in *Phillips Petroleum Company* v. *State of Wisconsin, supra,* held only that a sale in interstate commerce for resale was not within the exemption of Section 1(b). The discussion with respect to facilities and the recitation of the above-cited cases represents clear recognition of the intended scope and effect of the exemption as regards facilities.

The issue to be resolved is whether the Natural Gas Act requires that a certificate of public convenience and necessity issue for construction and operation of the facilities necessary to effect a sale by a producer or gatherer in interstate commerce for resale. The issue is not whether a sale of gas in interstate commerce for resale can be made without facilities. It cannot be doubted that facilities necessary to effect a sale of natural gas in interstate commerce are facilities used in interstate commerce. Recognition of this fact cannot, however, create power in this Commission to issue, much less to require, certificates authorizing construction and operation of such facilities.

S. L. DIGBY
Commissioner

Date filed: November 30, 1955

Date of Issuance: December 5, 1955

[fol. 236]

EXHIBIT C TO AFFIDAVIT

P. O. Box 2332

December 16, 1955

AIR MAIL—REGISTERED

Mr. Leon M. Fuquay, Secretary
Federal Power Commission
Washington 25, D. C.

Re: Docket G-4224
Acceptance of Certificate of Public Convenience & Necessity issued December 5, 1955.

Dear Sir:

Subject to the protest and other matters set forth in Paragraphs (5) and (6) of The Texas Company's Application for a Certificate of Public Convenience and Necessity, The Texas Company hereby accepts the Certificate of Public Convenience and Necessity issued by the Commission on *May 24, 1955, in the above-captioned Docket.

Respectfully submitted,

THE TEXAS COMPANY

By /s/ W. V. VIETTI

RDD:SJ

State of Texas)
County of Harris)

Before me, the undersigned authority, on this day personally appeared W. V. VIETTI, who being by me first duly sworn, on oath deposes and says:

That he is Division Manager, Gas Division, Producing Department of The Texas Company and is duly authorized

* Should be Dec. 5, '55—clerical error.

to make this acceptance; that he has read the foregoing and is familiar with the contents thereof and that the facts contained therein are true and correct to the best of his information, knowledge and belief.

/s/ W. V. Vietti

Subscribed and sworn to before me this the ..... day of Dec 16, 1955.

E. A. Cowart
Notary Public in and for
Harris County, Texas

[fol. 236a] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 237]

In the Superior Court of the State of Delaware
In and for New Castle County

Civil Action No. 671

1958

Cities Service Gas Company, a corporation, Plaintiff,

v.

The Texas Company, a corporation, Defendant.

Affidavit of Paul F. Schlicher—Filed February 9, 1959

District of
Columbia, ss.:

Paul F. Schlicher being duly sworn, deposes and says:

1. I am and have since January 1, 1954, been an attorney employed by The Texas Company, the defendant in the above action.

2. The Texas Company is not, and since January 1, 1954 has not, primarily engaged in the operation of an interstate pipeline.

PAUL F. SCHLICHER.

Sworn to and Subscribed before me the 29th day of January, 1959.

[Seal]

Thomas J. Bertke, Notary Public. My Commission Expires August 31, 1960.

[fol. 238] Acknowledgment of Service (omitted in printing).

[fol. 239]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671

1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

THE TEXAS COMPANY, a corporation, Defendant.

DEFENDANT'S ANSWERS TO PLAINTIFF'S REQUESTS FOR ADMISSIONS SERVED JANUARY 19, 1959—Filed March 4, 1959

Defendant hereby answers, from the information presently available to it, the following numbered paragraphs of plaintiff's requests for admissions served herein on January 19, 1959:

1. (a) Admitted.

(b) Admitted that defendant placed its endorsement on the reverse side of the check referred to, but denied that it placed it on the voucher.

(c) Admitted that defendant received the proceeds and benefits of the check referred to, but denied that defendant retained all of those proceeds and benefits.

(d) Admitted.

(e) Admitted.

(f) Admitted.

(g) Denied. Defendant was entitled to more than the full amount of that check in payment for the gas it delivered, and defendant did not assent to the conditions referred to in paragraph 1(g) of plaintiff's requests for admissions in endorsing and cashing that check.

[fol. 240] (h) Denied, but admitted that voucher checks similar in purport to the voucher check referred to in paragraph 1(a) of plaintiff's requests for admissions were issued by plaintiff and that the checks themselves were endorsed and cashed by defendant, with reference to gas delivered by defendant and received by plaintiff during the period January 23, 1954, to November 22, 1957.

(i) Admitted that gas statements accompanied each voucher check, but denied that there were not, from time to time, some differences in those statements.

(j) Denied. The change in price occurred because of things other than or in addition to the Kansas 11 cent Price Order.

(k) Admitted, subject to the matters stated in the foregoing answers to plaintiff's requests for admissions.

(l) Denied. See letters of defendant to plaintiff dated November 23, 1954, May 17, 1955, and May 6, 1958.

(m) Admitted.

(n) Denied. See answer to paragraph 1(l) of plaintiff's requests for admissions.

2. (a) Denied, but admitted that defendant's Federal Power Commission Rate Schedules 68 and 69, Docket No. G-4824, have now been rejected by the Federal Power Commission.

(b) Denied, but admitted that the Federal Power Commission has not accepted rate filings by defendant in place of such rejected Rate Schedules 68 and 69.

(c) Admitted.

(d) Admitted.

3. Denied, but admitted that a true, complete and accurate copy of Sections 55-708, 709, and 710, General Statutes of Kansas, 1949, is attached to plaintiff's amended complaint and marked Exhibit "B".

[fol. 241] 4. (a) Denied, but admitted that the statement quoted in paragraph 4(a) of plaintiff's requests for admissions appeared upon each such voucher received by defendant during the period January 1, 1954, to November 22, 1957, and that defendant endorsed and cashed each check attached thereto.

(b) Admitted.

5. (a) Admitted that a price of 11 cents per M.c.f. for gas measured at 14.65 p.s.i.a., deviated, was a price ordered by the Kansas State Corporation Commission by its 11 cent Price Order, but denied that the price of 11 cents per M.c.f. for gas measured at 14.65 p.s.i.a., deviated, received by defendant during the period covered by the complaint was solely attributable to the 11 cent Price Order of the Kansas State Corporation Commission.

(b) Denied. The gas price of 11 cents per M.c.f. measured at 14.65 p.s.i.a. received by defendant during the period covered by the complaint was a price for gas provided for by the terms, relating to weighted average prices and applicable regulatory orders, included in or incorporated in contracts negotiated between plaintiff and defendant. See, also, the letters of plaintiff to defendant dated July 17, 1953, and August 25, 1953.

(c) Defendant does not presently have sufficient knowledge or information concerning contracts negotiated between plaintiff and others to enable defendant to admit or deny paragraph 5(c) of plaintiff's requests for admissions.

6. (a) Admitted.

(b) Denied, but admitted that the respective volumes of gas listed in paragraph 6(b) of plaintiff's requests for admissions, priced at the rate per M.c.f. as set out opposite [fol. 242] each such volume in that paragraph, would have a value in money equal to that set out opposite each such rate in that paragraph, except that the amount set out in the tenth line of the third column of that paragraph should be $429,290.98 instead of $429,281.97, and the amount set out in the twelfth line of that column should be $1,783.97 instead of $1,783.79.

(c) Defendant does not presently have knowledge or information sufficient to enable it to admit or deny the heating value of the gas referred to in paragraph 6(c) of plaintiff's requests for admissions.

(d) Defendant does not presently have knowledge or information sufficient to enable it to admit or deny the station numbers referred to in paragraph 6(d) of plaintiff's requests for admissions, but admitted that all the wells there referred to are located in what is commonly called "Pleasant Valley Block."

(e) Defendant cannot admit or deny paragraph 6(e) of plaintiff's requests for admissions inasmuch as defendant cannot know for what purposes plaintiff may regard the heating value of the gas produced from those wells as having some bearing and inasmuch as defendant cannot in any event admit or deny a matter if the admission or denial might be contrary to fact.

7. (a) Admitted.

(b) Admitted.

(c) Admitted.

(d) Admitted.

(e) Defendant cannot admit or deny paragraph 7(e) of plaintiff's requests for admissions inasmuch as defendant cannot understand the fact to which plaintiff there refers. In any event, the proceeds accruing, to which plaintiff appears to refer, would not have accrued solely pursuant to

[fol. 243] the letters referred to in paragraphs 7(a), (c), and (d) of plaintiff's requests for admissions.

8. (a) Admitted.

(b) Admitted, except denied that the letter written by Paul F. Schlicher of defendant and referred to in paragraph 8(b) of plaintiff's requests for admissions contained the stamp, noting receipt by the Federal Power Commission, which is included in the upper right hand corner of Exhibit "I" of plaintiff's requests for admissions.

(c) Admitted.

(d) [Designated as an additional "(c)" in plaintiff's requests for admissions]. Admitted.

(e) Admitted that until after July 29, 1957, defendant did not file with the Federal Power Commission, in its FPC Rate Schedule No. 100, a copy of the Kansas State Corporation Commission's 11 cent Price Order itself, but denied that defendant had not previously filed a schedule showing a price and terms equivalent to that specified in the Kansas State Corporation Commission's 11 cent Price Order and referring to that Price Order.

(f) Admitted.

9. Admitted.

10. Admitted.

Although defendant has answered all of plaintiff's requests for admissions served herein on January 19, 1959, defendant considers many of those requests improper and objectionable because, among other things, they ask or seek claims or contentions of defendant or conclusions of law. Consequently, defendant's answers to such requests consist [fol. 244] of defendant's claims or contentions or its view of questions of law. Moreover, by answering those requests, defendant does not concede the competency, materiality, or relevancy of them or the answers thereto, and does not waive its right to object to or resist any further proceedings thereon or further discovery relating thereto.

The Texas Company, By: Paul F. Schlicher, per J. M. T., Jr.

[fol. 245] State of Delaware,
County of New Castle, ss.:

Paul F. Schlicher being duly sworn, deposes and says that he is attorney and agent of The Texas Company, the defendant herein; that he has read the foregoing answers to plaintiff's requests for admissions; and that the same are true to the best of his knowledge, information, and belief.

PAUL F. SCHLICHER

Sworn to and Subscribed before me, the undersigned, a Notary Public for the state and county aforesaid, this 4th day of March, 1959.

Gertrude T. Parkinson, Notary Public.

[Seal]

[fol. 246] [File endorsement omitted]

Acknowledgment of Service (omitted in printing).

[fol. 247]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671

1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

vs.

THE TEXAS COMPANY, a corporation, Defendant.

PLAINTIFF'S AFFIDAVIT IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT—Filed April 13, 1959

State of Delaware,
County of New Castle, ss.:

Howard L. Williams, of lawful age, being first duly sworn, upon his oath deposes and says:

That he is one of the attorneys of record for plaintiff in the above styled and numbered cause; that on or about April 1, 1959, there was furnished to him, as such attorney of record, by the attorneys of record for defendant, the attached instruments marked Exhibits Williams-1 and 2; that such instruments were furnished to affiant pursuant to his request therefor and as true and correct copies of the instruments referred to in paragraph 22 B. of "Defendant's Answers to Plaintiff's Interrogatories served January 12, 1959."

Further Affiant Saith Not.

HOWARD L. WILLIAMS

Subscribed and sworn to before me this 13th day of April, 1959.

Doris D. Burdett, Notary Public.

My Commission Expires: Nov. 12, 1960.

[fol. 248]

EXHIBIT WILLIAMS-1 TO AFFIDAVIT

TO ALL KANSAS ROYALTY OWNERS

Effective January 1, 1954, the Kansas Corporation Commission has prescribed for all gas produced from the Kansas portion of the Hugoton Field a minimum wellhead price of 11¢ per M.C.F., measured on a pressure base of 14.65 pounds. A previous Order of the Commission effective July 1, 1953, prescribed a standard pressure base of 14.65 pounds and that measurement volumes should be corrected for temperature and compressibility.

The validity of these Orders is being contested in the courts, but pending final determination of their validity, our payments to royalty holders will be made in accordance with the Orders.

If it is finally determined that we have overpaid you, you agree upon such determination to refund us such overpayments and you further agree that we may withhold subsequent royalty payments until the overpayments have been recovered. Your acceptance of our checks will constitute such agreements.

THE TEXAS COMPANY

March 22, 1954

[fol. 249] To All Kansas Working Interest Owners and Royalty Interest Owners:

The United States Supreme Court, on April 11, 1955, in *Natural Gas Pipe Line Company of America* v. *Panoma Corp. et al.*, No. 191, and in *Natural Gas Pipe Line Company of America* v. *Corporation Commission of the State of Oklahoma et al.*, No. 321, 99 L. ed. 472, held the Oklahoma minimum wellhead price orders inapplicable to a sale and transportation of gas for resale in interstate commerce, after its production and gathering had ended.

Because of that decision there is considerable uncertainty regarding the validity and effect, as applied to sales of gas which is ultimately transported for resale in interstate

commerce, of the order of the Kansas Corporation Commission, effective January 1, 1954, which prescribed for all gas produced from the Kansas portion of the Hugoton Field a minimum wellhead price of 11¢ per M.C.F. measured on a pressure base of 14.65 pounds.

In view of such uncertainty, purchasers from us of gas produced from the Kansas portion of the Hugoton Field are making payment to us on the basis of the minimum wellhead price fixed by the Kansas Corporation Commission without prejudice to future adjustment should it later be determined that such price is improper.

So long, therefore, as we continue to be paid on the basis of such minimum wellhead price, our payments to working interest owners and royalty interest owners will be made on the same basis. If it is finally determined, however, that we have overpaid you, you agree upon such determination to refund us such overpayments and you further agree that we may withhold subsequent payments until the overpayments have been recovered. Your acceptance of our checks will constitute such agreements.

THE TEXAS COMPANY

July 20, 1955

[fol. 250]

EXHIBIT WILLIAMS-2 TO AFFIDAVIT

To all Owners of Working Interests and Royalty Interests in Proceeds of Gas Produced in the Kansas-Hugoton Field:

The United States Supreme Court on January 20, 1958, in *Cities Service Gas Co.* v. *State Corporation Commission of Kansas*, No. 85, 2 L. Ed. 2d 355, reversed the prior decision of the Kansas Supreme Court in the same case, and thus appears to have held, in effect, that the order of the State Corporation Commission of the State of Kansas, effective January 1, 1954, which prescribed for all gas produced from the Kansas portion of the Hugoton Field a minimum wellhead price of 11¢ per M.C.F. measured on a pressure base of 14.65 pounds, is invalid as applied to sales subject to the jurisdiction of the Federal Power Commission.

Because of that decision, and the fact that some of our basic contracts call for rates lower than those specified by the Kansas minimum price order, there is considerable uncertainty concerning the legality of the 11¢ price we have been receiving from purchasers of our interstate gas since January 1, 1954, and the price we can collect hereafter. One purchaser has already demanded a refund, with interest at 6%, for the difference between the minimum wellhead price and the basic contract price.

If it is determined that we have been collecting more than the amount to which we are legally entitled we possibly will be required to refund, at 6% interest, all "overpayments" made by the companies purchasing our gas since January 1, 1954. In this event, you will have been overpaid and we will, of course, expect like reimbursement from you.

As yet we do not know the attitude of all of the purchasers of our gas in this field as to future payments. One purchaser, Cities Service Gas Company, has tendered payment for gas purchased since November 23, 1957, on the basis that the basic contracts in effect in May, 1954, call for lower prices than the minimum wellhead price prescribed by the order above referred to. Until uncertainty of the

proper price is resolved, we will make payments to you and other working interest owners and royalty interest owners, on account of gas produced and sold in the Hugoton Field of Kansas, on the basis of the prices called for in our basic gas sales contracts with the respective purchasers of interstate gas in the Field. If it is subsequently determined that the purchasers must pay The Texas Company a rate established on the basis of the Kansas minimum well head price, we will promptly account to you for any difference you may be due.

[fol. 251] Past payments affected by minimum price orders were made to you on the condition that our payment and your acceptance thereof would not prejudice the rights of either of us with respect to such payments. The enclosed payments and all future payments shall also be without prejudice to the rights of either of us with respect thereto.

THE TEXAS COMPANY

March 25, 1958

[fol. 251a] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 252]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671 1958

CITIES SERVICE GAS COMPANY, a Corporation, Plaintiff,

v.

THE TEXAS COMPANY, a Corporation, Defendant.

SUPPLEMENTAL ANSWERS OF PLAINTIFF, CITIES SERVICE GAS COMPANY TO DEFENDANT'S REQUEST FOR ADMISSIONS BY PLAINTIFF—Filed April 17, 1959

State of Oklahoma,
County of Oklahoma, ss.:

Russel W. Hofsess, of lawful age, being first duly sworn, upon his oath says:

He is Vice President of Cities Service Gas Company, plaintiff in the above-styled action; that he makes the following answers for and in behalf of plaintiff to Interrogatories served upon plaintiff January 27, 1959, wherein defendant asks that plaintiff "state the facts upon which plaintiff bases its denial of the following paragraphs of defendant's requests for admissions filed herein on November 24, 1958: 4 (a), 4(b), 5 (b), 5 (c), 5 (e), 5 (f), 6 (a), 6 (b), 6 (c), 6 (d), 8, 10 (a), 10 (b), 11, 13 (a), 13 (b), 13 (c), 14 (a), 14 (b), 14 (c), 14 (d), 14 (e), 15 (a), 15 (b), 15 (c), 16 (a), 16 (b), 16 (c), 16 (d), 17 (a), 17 (b), 17 (c), 18 (a), 18 (b), 18 (c), 18 (d), 19 (a), 19 (b), 20 (a), 20 (b), 20 (c) and 20 (d).

Answer to Interrogatory 4 (a)

Plaintiff denied defendant's request for admission of paragraph 4 (a) because other cases, in effect, have held the Kansas 11¢ Price Order (paragraph 4 of Complaint) invalid and ineffective, such as Natural Gas Pipeline Com-

pany of America v. Panoma Corporation et al., 349 U.S. 44, 99 L.Ed. 866, where the United States Supreme Court held an essentially identical Oklahoma gas price order invalid from its inception. In that case the Court held:

[fol. 253] "In these cases Oklahoma has attempted to fix a minimum price to be paid for natural gas, after its production and gathering has ended, by a company which transports the gas for resale in interstate commerce. We held in Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672, 98 L. ed. 1035, 75 S.Ct. 794, that such a sale and transportation cannot be regulated by a state but are subject to the exclusive regulation of the Federal Power Commission. The Phillips case, therefore, controls this one."

The Panoma case was the authority upon which the Kansas 11¢ Price Order was held invalid. Also, see Natural Gas Pipeline Company of America v. Harrington, 246 F. 2d 915 (5th Cir. 1957).

Answer to Interrogatory 4 (b)

Plaintiff supplements its denial of defendant's request for admission of paragraph 4 (b) by saying, that although to plaintiff's knowledge the Kansas Corporation Commission has not itself formally "modified, reversed, set aside or rescinded the order referred to in paragraph 4 of the complaint," nevertheless, the Federal and Kansas courts have done so for the Kansas Commission—as illustrated by: (a) the decision of the United States Supreme Court in Cities Service Gas Company v. State Corporation Commission, 355 U.S. 381, 2 L.Ed. 2d 355, where the decision of the Kansas Supreme Court (304 P. 2d 528) affirming that order was reversed; and (b) the judgment of the Finney County, Kansas District Court (in which the judicial review proceeding testing the validity of such order was commenced) where the Court found:

"The Court further finds that the State Corporation Commission of the State of Kansas was without jurisdiction to enter its order in its Docket No. 44,079-C (C-3216) Conservation Division, dated December 2,

1953, same being the subject of review in this proceeding, *and that said Order of said State Corporation Commission should be by this Court set aside,* and that the costs of this proceeding shall be taxed against the State Corporation Commission, defendant here."

and ordered and adjudged:

"2. *That the Order of the State Corporation Commission of the State of Kansas,* entered December 2, 1953, in its Docket No. 44,079-C (C-3216), Conservation Division, *be and the same is hereby set aside.*"

Answer to Interrogatory 5 (b)

Plaintiff's supplemental answer to Interrogatory 4 (b) applies equally to defendant's Interrogatory 5 (b).

Answer to Interrogatory 5 (c)

Plaintiff admits that to its knowledge the February 18, 1949 Order of the Kansas Corporation Commission has not been judicially determined to be invalid or ineffective [fol. 254] in an action where such Order was the subject of the litigation; however such Order has been, in effect, determined to be invalid and ineffective in such cases as Cities Service Gas Co. v. State Corporation Commission, 355 U.S. 381, 2 L.Ed. 2d 355, and Natural Gas Pipeline Company of America v. Panoma et al., 349 U.S. 44, 99 L.Ed. 866.

Answer to Interrogatory 5 (e)

The Kansas Corporation Commission by its Order dated December 2, 1953 (Docket No. 44,079-C (C-3216)) did prior to January 1, 1954 modify, reverse, set aside, or rescind the Order of the Kansas Corporation Commission dated February 21, 1951, referred to in paragraph 5 (d) of defendant's requests for admissions; also, the effect of the decision of the United States Supreme Court in Cities Service Gas Company v. State Corporation Commission, 355 U.S. 381, 2 L.Ed. 2d 355, was to "reverse, set aside or rescind" such Order if it be contended such Order affected the price of gas hereunder.

Answer to Interrogatory 5 (f)

Plaintiff admits that to its knowledge the February 21, 1951 Order of the Kansas Corporation Commission has not been judicially determined to be invalid or ineffective in an action where such Order was the subject of the litigation; however such Order has been, in effect, determined to be invalid and ineffective in such cases as Cities Service Gas Co. v. State Corporation Commission, 355 U.S. 381, 2 L.Ed 2d 355, and Natural Gas Pipeline Company of America v. Panoma et al., 349 U.S. 44, 99 L.Ed. 866.

Answer to Interrogatory 6 (a)

Plaintiff denied defendant's request because the writing attached as Exhibit "F" to defendant's answer was not "a complete and accurate copy" of Kansas Corporation Commission's Order dated May 20, 1953, Docket No. 34,780-C (C-1825) (Measurement Order) because there was not included in and as a part of such Exhibit "F" that Commission's "Memorandum Opinion", dated May 20, 1953, which, pursuant to that Order, is made a part thereof by reference. A complete and accurate copy of such Memorandum Opinion forms a part of Exhibit "K" to plaintiff's requests for admissions by defendant.

Answer to Interrogatory 6 (b)

The Kansas Corporation Commission (Measurement) Order dated May 20, 1953, effective July 1, 1953, fixed the standard of measurement for gas, but did not affect the contract price for gas under the June 16, 1949 Contract. [fol. 255] As defendant is aware, the Kansas Corporation Commission has not applied such Order so as to affect the contractual relations of the parties under the June 16, 1949 Contract.

Answer to Interrogatory 6 (c).

Plaintiff admits that to its knowledge the Kansas Measurement Order referred to in 6 (a) has not been judicially determined to be invalid or ineffective in an action where such Order was the subject of the litigation; however, if it

be contended such Order affects the price of gas hereunder, then plaintiff says such Order has been, in effect, determined to be invalid and ineffective in such cases as Cities Service Gas Company v. State Corporation Commission, 355 U.S. 381, 2 L.Ed. 2d 355, and Natural Gas Pipeline Company of America v. Panoma et al., 349 U.S. 44, 99 L.Ed. 866.

Answer to Interrogatory 6 (d)

Plaintiff supplements its denial to defendant's request for admission of paragraph 6 (d) by saying, that although to plaintiff's knowledge the Kansas Corporation Commission has not itself formally "modified, reversed, set aside or rescinded" such Measurement Order, nevertheless the United States Supreme Court in Cities Service Gas Company v. State Corporation Commission, supra, has in effect "modified, reversed, set aside or rescinded" such Order for the Kansas Corporation Commission, if it be contended that such Order affects the price of gas hereunder.

Answer to Interrogatory 8,

Plaintiff supplements its denial of paragraph 8 by admitting that to plaintiff's knowledge Federal Power Commission did not, prior to the issuance on July 16, 1954 of its Order 174, exercise authority or jurisdiction under the Natural Gas Act of defendant's gas sales to plaintiff; but plaintiff does not admit Federal Power Commission was without such authority or jurisdiction over such sales prior to July 16, 1954, for at all times on and after June 16, 1949, the date of the gas sales contract here involved, Federal Power Commission possessed and had the same and identical authority and jurisdiction under the Natural Gas Act over defendant's sales to plaintiff as Federal Power Commission possessed and had on July 16, 1954, when it issued Order 174.

Answer to Interrogatory 10 (a)

Plaintiff supplements its denial of 10 (a) by saying that all of the sales of gas here involved were made "in interstate commerce" for resale within the meaning of the Natural Gas Act.

[fol. 256] Answer to Interrogatory 10 (b)

Plaintiff supplements its denial of 10 (b) by saying first, plaintiff admits the gas sales referred to in 10 (a) were made by defendant to plaintiff during the period January 1, 1954 through November 22, 1957, and second, plaintiff denies defendant was prior to June 7, 1954 an "independent producer" under Federal Power Commission Order 174-A and Section 154.91 of its Regulations.

Answer to Interrogatory 11

Plaintiff supplements its denial of defendant's request for admission of paragraph 11 by saying that plaintiff, on and immediately prior to June 7, 1954, paid defendant for gas referred to in the Complaint "an amount equal to 11¢ per M.c.f. at 14.65 p.s.i.a., deviated" on the conditions set out in the letter from plaintiff to defendant dated January 21, 1954, the statement on each voucher check issued by plaintiff to defendant in payment for such gas, and defendant's acceptance and retention of the proceeds of each such check. Defendant has filed such letter with Federal Power Commission as a part of its filings with that Commission.

Answer to Interrogatory 13 (a)

Admitted.

Answer to Interrogatory 13 (b)

Plaintiff supplements its answer to 13 (b) by saying plaintiff was then and is now without personal knowledge that the certificate of public convenience and necessity referred to "has not heretofore been withdrawn, revoked, or rescinded or determined to be invalid or ineffective." However, upon the basis that defendant represents and certifies to this Court and to plaintiff that such certificate has not by Federal Power Commission or a Court "heretofore been withdrawn, revoked or rescinded or determined to be invalid or ineffective", plaintiff admits such request.

Answer to Interrogatory 13 (c)

Plaintiff supplements its answer to 13 (c) by saying plaintiff was then and is now without personal knowledge "that defendant accepted the certificate of public convenience and necessity referred to in paragraph 13 (a) hereof on the conditions referred to in that certificate," especially when defendant under its verified application to Federal Power Commission for such certificate stated, among other things:

> "This application is made under protest and to avoid the penalties provided in Section 21 of the Natural Gas Act. It is also made subject to Applicant's Application for Rehearing in respect to Order 174-A, filed August [fol. 257] 25, 1954, Federal Power Commission Docket R-138, any and all resulting decisions, determinations, proceedings, orders, rules or regulations, and any judicial appeals therefrom or reviews thereof. By filing this application, Applicant does not admit that it or the sales of gas embraced by the above-mentioned contract is subject to regulation by the Commission and Applicant hereby expressly reserves not only its legal and equitable rights to contest such regulation but also any and all contractual rights it now has or may in the future have by virtue of the terms and provisions of said contract, whether or not same conflict with or may be contrary to the provisions of any order, rule, regulation, decision or determination that has or may be issued or adopted by the Commission."

Also, plaintiff is unaware of any reservations, mental and otherwise, upon which defendant may have accepted such certificate; however, upon the basis defendant represents and certifies to this Court and to plaintiff that defendant accepted such certificate "on the conditions referred to in that certificate", plaintiff admits plaintiff accepted such certificate "on the conditions referred to in that certificate."

Answer to Interrogatory 14 (a)

Plaintiff supplements its answer to 14 (a) by saying it denies such request, as stated. Plaintiff admits *only* that:

(a) the following documents were filed with Federal Power Commission and (b) such documents relate to the Columbian Contract only insofar as any such documents may pertain to defendant's Federal Power Commission Rate Schedule 100,—namely:

(1) Documents referred to in paragraph 1 of Defendant's Requests for Admissions;

(2) Letter from defendant to Federal Power Commission dated September 24, 1954 (R.S. 100) marked Exhibit L (1);

(3) Exhibit marked L (2) (1 through 4) (R.S. 100);

(4) Exhibit marked L (3) (1 through 17) (R.S. 100);

(5) "So-called" Federal Power Commission acceptance letter dated February 7, 1955, to defendant pertaining to defendant's rate schedules 68, 69, and 100 and other rate schedules not involved in this action, marked Exhibit L(4) (1 through 5);

(6) Letter from defendant to Federal Power Commission dated June 13, 1957, marked Exhibit L (5) (1) and Supplement No. 5 or 3 to R.S. 100, marked Exhibit L (5) (4 through 7);

(7) Letter from Federal Power Commission to defendant dated July 12, 1957 (R.S. 68, 69 and 100), marked Exhibit L (6);

(8) Western Union telegram from defendant to Federal Power Commission dated July 16, 1957 (R.S. 68, 69 and 100), marked Exhibit L (7);

(9) Letter from Federal Power Commission to defendant dated July 19, 1957 (R.S. 68, 69 and 100), marked Exhibit L (8);

[fol. 258] (10) Letter from defendant to Federal Power Commission dated July 29, 1957 (only Order part, not Memorandum part, of Kansas 11¢ Order) and Cities' January 21, 1954 letter (R.S. 100)—marked Exhibit L (9);

(11) "So-called" Federal Power Commission acceptance letter to defendant dated August 29, 1957 (R.S. 100)—marked Exhibit L (10);

(12) "So-called" Federal Power Commission acceptance letter to defendant dated —— (R.S. 100), marked Exhibit L (11).

For purposes of 14 (a) plaintiff denies all such documents insofar as defendant's Federal Power Commission Rate Schedules 68 and 69 are concerned.

Answer to Interrogatory 14 (b)

Plaintiff supplements its denial of 14 (b) by admitting only that such filings were tendered to Federal Power Commission under F.P.C. Order 174-A as shown by defendant's transmittal letter to Federal Power Commission dated September 24, 1954, Exhibit L (1) to Defendant's Requests for Admissions.

Answer to Interrogatory 14 (c)

Plaintiff supplements its denial of 14 (c) by saying all documents referred to in 14 (a) are not in the status of not having "heretofore been withdrawn or rejected or determined to be invalid or ineffective," for, as partially illustrated, the Kansas 11¢ Price Order was held invalid by the United States Supreme Court in Cities Service Gas Co. v. State Corporation Commission, supra; the Federal Power Commission rejected defendant's Federal Power Commission filings relating to defendant's Rate Schedules 68 and 69, and the Kansas Supreme Court held the Kansas Oil and Gas Severance Tax unconstitutional in State of Kansas v. Kirchner, 322 P.2d 759.

Answer to Interrogatory 14 (d)

Plaintiff denied and now denies that defendant furnished plaintiff with copies of *all* the writings referred to in paragraph 14 (a); however plaintiff admits defendant furnished the following writings to plaintiff, namely: Exhibits L (2), L (3) and L (4).

Answer to Interrogatory 14 (e)

After filing with Federal Power Commission, the writings referred to in paragraph 14 (a) would have been available to plaintiff during Federal Power Commission's regular office hours, subject to the delay incident to the flood of filings with that Commission under its Orders 174.

Answer to Interrogatory 15 (a)

Plaintiff admits Federal Power Commission granted Cabot Carbon Company a certificate of public convenience and necessity for sales of gas to plaintiff under the Sun- [fol. 259] flower contract referred to in the Complaint. Cabot in its verified application dated November 22, 1954, for such certificate, says:

> "Cabot Carbon Company files this application solely on its own behalf and not as a representative of other individuals."

Cabot in its letter to defendant dated December 2, 1957, also says, among other things:

> "* * * we have made no attempt to cover your portion of the gas from these units in any of our reports to the Federal Power Commission."

Answer to Interrogatory 15 (b)

Admitted as to Cabot Carbon Company only.

Answer to Interrogatory 15 (c)

Admitted Cabot Carbon Company accepted such certificate of public convenience and necessity on the conditions referred to in such certificate.

Answer to Interrogatory 16 (a)

Plaintiff supplements its denial of 16 (a) by admitting only that such filings were tendered to Federal Power Commission under F.P.C. Order 174-A as shown by Cabot Carbon Company's letter of transmittal to Federal Power Commission dated November 22, 1954, which letter is

marked Exhibit A H (1) and attached to the affidavit of Andrew B. Kirkpatrick, Jr. in behalf of and pertaining to defendant's motion for summary judgment herein.

Answer to Interrogatory 16 (b)

Plaintiff supplements its denial of 16 (b) by saying defendant has neither described with reasonable certainty nor attached to its Request for Admission the documents referred to. On the basis that some of the documents referred to are the same or similar to documents filed with Federal Power Commission by others, defendant says the documents referred to in 16 (a) are not in the status of not having "heretofore been withdrawn, revoked or rescinded, or determined to be invalid or ineffective" for, as partially illustrated, the Kansas 11¢ Price Order was held invalid by the United States Supreme Court in Cities Service Gas Company v. State Corporation Commission, supra, and the Kansas Supreme Court held the Kansas Oil and Gas Severance Tax unconstitutional in State of Kansas v. Kirchner, 322 P. 2d 759.

Answer to Interrogatory 16 (c)

Plaintiff supplements its denial of 16 (c) by saying: Cabot has not furnished plaintiff with all copies of the writings referred to in 16 (a). Defendant has not described the writings referred to in 16 (a) with any certainty, nor has defendant furnished such writings to plaintiff. Plaintiff is without knowledge of the content of the writings to [fol. 260] which defendant may refer. Plaintiff admits Cabot furnished plaintiff a copy of Cabot's Change in Rate Schedule dated May 16, 1956. A copy of such Change in Rate Schedule, together with a copy of letter of Federal Power Commission to Cabot dated June 14, 1956, rejecting such Change in Rate Schedule, respectively marked Exhibits "A" and "B", is attached hereto and made a part hereof.

Answer to Interrogatory 16 (d)

After filing with Federal Power Commission, the writings referred to in paragraph 16 (d) would have been

available to plaintiff during Federal Power Commission's regular office hours, subject to the delay incident to the flood of filings with that Commission under its Orders 174.

Answer to Interrogatory 17 (a)

Admitted as to Western Natural Gas Company only.

Answer to Interrogatory 17 (b)

Admitted as to Western Natural Gas Company only.

Answer to Interrogatory 17 (c)

Admitted as to Western Natural Gas Company only.

Answer to Interrogatory 18 (a)

Plaintiff supplements its denial of 18 (a) by saying it denies such request as stated, except it admits *only* that Western's filings were tendered to Federal Power Commission under F.P.C. Order 174-A, as shown by Western's transmittal letter to Federal Power Commission dated November 10, 1954, a copy of which is attached to defendant's affidavit in support of its Motion for Summary Judgment and marked Exhibit "U".

Answer to Interrogatory 18 (b)

Plaintiff supplements its denial of 18 (b) by saying defendant has neither described with reasonable certainty nor attached to its Request for Admission the documents referred to. On the basis that some of the documents referred to are the same or similar to documents filed with Federal Power Commission by others, defendant says the documents referred to in 18 (b) are not in the status of not having "heretofore been withdrawn, revoked or rescinded, or determined to be invalid or effective" for, as partially illustrated, the Kansas 11¢ Price Order was held invalid by the United States Supreme Court in Cities Service Gas Company v. State Corporation Commission, supra, and the Kansas Supreme Court held the Kansas Oil and Gas Severance Tax unconstitutional in State of Kansas v. Kirchner, 322 P. 2d 759.

[fol. 261] Answer to Interrogatory 18 (c)

Plaintiff supplements its denial of 18 (c) by saying Western has not furnished plaintiff with all copies of the writings referred to in 18 (a). Defendant has neither described such writings with reasonable certainty nor has defendant attached such writings to its Request for Admissions. Plaintiff is without knowledge of the content of such writings as defendant may refer to. Plaintiff states Western furnished plaintiff with Western's initial Rate Schedule (omitting contracts therein referred to) filed with Federal Power Commission in connection with the Western Contract in accordance with Federal Power Commission's Order No. 174-A.

Answer to Interrogatory 18 (d)

After the filing with Federal Power Commission, the writings referred to in paragraph 18 (d) would have been available to plaintiff during Federal Power Commission's regular office hours, subject to the delay incident to the flood of filings with that Commission under its Orders 174.

Answer to Interrogatory 19 (a)

Plaintiff did not at any time contest, protest or object to the Federal Power Commission certificate of public convenience and necessity and rate filings for the sales of natural gas to plaintiff referred to in the Complaint.

Answer to Interrogatory 19 (b)

Plaintiff did contest, protest, or object to a Federal Power Commission certificate of public convenience and necessity and a rate filing for sales of natural gas from the Kansas-Hugoton Field after June 7, 1954, made to it by an independent producer or producers of natural gas other than defendant.

Answer to Interrogatory 20 (a)

Plaintiff supplements its denial of 20 (a) by saying that whether "plaintiff could have applied for a stay of sus-

pension of" the Kansas 11¢ Price Order during the pendency of the review proceedings pertaining to that Order is a question of law dependent upon an interpretation of the applicable Kansas statute or statutes. Aside from the question or questions of law as to whether plaintiff could have applied for such a stay of suspension, plaintiff admits it did not in such review proceedings apply for such a stay of suspension.

Answer to Interrogatory 20 (b)

Plaintiff supplements its denial of 20 (b) by saying that [fol. 262] it is a question of law whether such "penalties and actions" applied only if the Kansas 11¢ Price Order was valid. Plaintiff, originally and here, denies that, as a matter of law, such "penalties and actions" applied only if such order "was valid."

Answer to Interrogatory 20 (c)

Plaintiff supplements its denial of 20 (c) by saying: first, that at no place in its Complaint does plaintiff ever expressly or impliedly seek to apply the "penalties and actions", referred to in paragraph 4 of its Complaint, to the two Kansas Corporation Commission Orders dated, respectively, February 18, 1949 and February 21, 1951, nor does any allegation in such Complaint relate to such Orders; second, as a matter of law, the Kansas Corporation Commission Orders, dated, respectively, February 18, 1949 and February 21, 1951, have no effect or application to any gas involved in this action; third, if such Orders have any application to the gas involved in this action, then such Orders were invalid and void from their inception for the same reason the Kansas 11¢ Price Order was void ab initio; and, fourth, whether such "penalties and actions" applied to "violations" of such Orders is not only a question of law, but here it is a moot one.

Answer to Interrogatory 20 (d)

See answers to 20 (b) and 20 (c).

This Court will observe plaintiff's supplementations of its denials of defendant's requests for admissions are largely statements of plaintiff's contentions and law conclusions which have been necessitated by defendant's insistence that its improper and objectionable interrogatories be answered. Under the circumstances, although plaintiff believes such interrogatories are incompetent, immaterial and irrelevant, it has attempted to answer such interrogatories; however plaintiff, by its answers, does not concede the competency, materiality or relevancy of either such interrogatories or the answers thereto, nor does plaintiff waive its right to object to further discovery or other proceedings related thereto.

Dated this 11th day of April, 1959.

RUSSEL W. HOFSESS

Subscribed and sworn to before me this 11th day of April, 1959.

GLADYS HEADY, Notary Public

My commission expires March 15, 1960.

[fol. 263] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 264]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Actions No. 670 and 708—1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff

v.

COLUMBIAN FUEL CORPORATION, a corporation, Defendant

Civil Action No. 671—1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff

v.

THE TEXAS COMPANY, a corporation, Defendant

Main Brief of Defendants in Support of Their Motions for Summary Judgment—Filed May 1, 1959

STATEMENT OF THE CASES

The Nature of the Proceedings

. . . . . .

[fol. 265] Cities avers that what it paid Columbian & Texaco for gas delivered after January 1, 1954, exceeded the price for that gas originally specified in its purchase agreements. It asks that it be refunded the difference between what it paid and the alleged contract price. It seeks this recovery upon common law theories of contract, restitution, and unjust enrichment.

Columbian & Texaco have both moved for summary judgment on the ground that, throughout the period covered by the complaint, the legal price for their sales of gas to Cities was exclusively controlled by state and federal regulations, not by private contract, and Cities does not

base its claims upon those price regulations. This is the brief of Columbian & Texaco in support of those motions.

• • • • • • •

[fol. 266] ARGUMENT

II.

After Federal Regulation Under the Natural Gas Act Commenced on July 16, 1954; Rates on File With the Federal Power Commission Controlled the Price for Gas Sold to Cities by Columbian & Texaco.

• • • • • • •

[fol. 267] Cities in these cases does not, however, base its claims for the period after June 7, or July 16, 1954, on the filed rate applicable to its purchases from Columbian & Texaco. It does not, in its complaints, even refer to the Natural Gas Act, the Federal Power Commission and its regulations, or the rate filings that have been made there-[fol. 268] under.* Rather, it squarely bases its cases solely upon common law principles of contract and that alone. See *Cities Service Gas Company v. Skelly Oil Company*, 165 F. Supp. 31 (Del. 1958). It cannot, we submit, succeed in that.

• • • • • • •

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* If Cities had had a claim on the filed rate, it would have had to assert it in a federal court, for §22 of the Natural Gas Act, 15 U. S. C. §717u, directs that the "District Courts of the United States . . . shall have exclusive jurisdiction of violations of this act or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this act or any rule, regulation, or order thereunder. . . ." See, *e.g.*, *Standard Power & Light Corp. v. Investment Associates, Inc.*, 29 Del. Ch. 593, 51 A. 2d 572, 579 (Sup. Ct. 1947) (involving the jurisdictional provision of the Securities Exchange Act of 1934 which is in all material respects identical).

[fol. 269]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671—1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

THE TEXAS COMPANY, a corporation, Defendant.

CERTIFIED COPIES OF OFFICIAL PAPERS—Filed June 24, 1959

In the manner provided by 10 Del. C. § 4308 and by Rule 44 of the Rules of this Court the defendant hereby introduces into the record of this cause the certified copies of papers attached hereto as Exhibits A through D hereof.

Morris, Nichols, Arsht & Tunnell; James M. Tunnell, Jr.; Andrew B. Kirkpatrick, Jr., 3000 DuPont Building, Wilmington, Delaware, Attorneys for Defendants.

Of Counsel: Paul F. Schlicher, 24th Floor Chrysler Building, 135 E. 42nd Street, New York, New York.

[fol. 270] NOTE:

The original certified copies, of which photocopies are attached hereto, are all on file in this Court in Civil Action No. 722, entitled "Cities Service Gas Company v. Pan American Petroleum Corporation."

[fol. 271]

EXHIBIT D(3)

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

I, Joseph H. Gutride, Secretary of the Federal Power Commission, and official custodian of the records of said Commission, do hereby certify that the attached three pages are true and correct copies of pages numbers 52752, 52756 and 52912 (IP Table No. 61, Sheet 8 of Table 1) from the minutes of the Commission meeting of December 29, 1954.

In witness whereof I have hereunto subscribed my name and caused the seal of the Federal Power Commission to be affixed this 12th day of June A.D., 1959, at Washington. D. C.

/s/ J. H. GUTRIDE
Secretary.

(Seal)

[fol. 272]

52752

MINUTES OF THE THREE THOUSAND EIGHT HUNDRED AND FORTY-FOURTH MEETING

The Commission convened at 10:00 a.m. on December 29, 1954.

Present: Acting Chairman Draper, Commissioners Smith, Digby and Stueck.

The minutes of the 3836th, 3837th, 3838th, 3839th, 3840th, 3841st and 3843rd meetings of December 14, 15, 16, 17, 20, 21 and 23, respectively, were read and approved. (Acting Chairman Draper, not having participated in the meetings of December 15, 17, 20 and 21, did not vote on the question of approval of the minutes for those dates. Commissioners Smith and Stueck, not having participated in the meeting of December 23, did not vote on the question of approval of the minutes for that date. Commissioner Digby, not having participated in the meeting of December 17, did not vote on the question of approval of the minutes for that date.)

Action was taken, as set forth in the documents appended hereto, in the following matters:

(1) Docket Nos. G-1142, G-1508, G-2019, G-2074, G-2210, G-2220, and G-2378, United Gas Pipe Line Company
(Order denying motion of Mississippi River Fuel Corporation to dismiss)

(2) Docket Nos. G-1142, G-1508, G-2019, G-2074, G-2210, G-2220 and G-2378, United Gas Pipe Line Company
(Order directing issuance of subpena for the production of documentary evidence)
(Commissioner Digby dissenting)

(3) Docket No. E-6445, Consolidated Gas Electric Light and Power Company of Baltimore v. Pennsylvania Water & Power Company, Respondent, Public Service Commission of Maryland, Intervenor Docket No. E-6350, Public Service Commission of Maryland v. Pennsylvania Water & Power Company, Susquehanna Transmission Company of Maryland, Safe Harbor Water Power Corporation, Consolidated Gas Electric Light and Power Company of Baltimore, Metropolitan Edison Company, Pennsylvania Power & Light Company, and Philadelphia Electric Company, Respondents
Pennsylvania Public Utility Commission, Intervenor
(Order allowing service agreements to take effect)

(4) Docket No. E-6595, Maine Consolidated Power Company
(Order to show cause and fixing date for hearing)
[fol. 273]

52756

(42) Docket No. G-2534, Alabama-Tennessee Natural Gas Company
(Findings and order issuing certificate of public convenience and necessity and approving abandonment of facilities)

(43) Docket Nos. G-4612 and G-4613, Southern Union Gas Company Docket No. G-4614, Aztec Oil & Gas Company
(Findings and order issuing certificate of public convenience and necessity and dismissing application)
(Commissioner Digby filed a concurring statement)

(44) Docket No. G-4667, Anderson Natural Gas Company
(Findings and order directing physical connection of facilities and sale of natural gas)

(45) Docket No. G-4264, Southern Natural Gas Company
(Order dismissing motion for rehearing and reconsideration)

(46) Docket No. G-2404, Kansas-Nebraska Natural Gas Company, Inc.
(Order approving proposed settlement and accepting revised tariff)

(47) Docket No. E-6587, Southern Utah Power Company
(Order authorizing issuance of short-term promissory note)

* * * * * * *

The Commission approved a letter to the Assistant Secretary of the Interior, approving, in response to his letter of December 8, 1954, the extension to July 6, 1955, of the period of delivery of experimental energy by Bonneville Power Administration, Docket No. E-6571, to the City of Springfield, Oregon, for resale to the National Metallurgical Corporation.

* * * * * * *

The Commission considered the rate filings identified on attached Tables 1, 2, 3 and 4, IP 61, dated December 22, 1954, and voted to accept all of the rate schedules for filing; that notice be waived for all tax increases filed on or before October 1, 1954, to establish the requested effective dates; that for those tax increases filed after October 1, 1954, notice be waived only to the extent necessary to establish the dates of filing or the dates requested, whichever are later, as the effective dates; and directed that the filing companies be advised of this action by appropriate form letters.

* * * * * * *

The Commission approved a letter to the Phillips Petroleum Company, rejecting, in response to its letters of November 30, 1954, Rate Schedules 241 and 242.

* * * * * * *

[fol. 273a] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 274]

SUMMARY OF INDEPENDENT PRODUCER RATE FILINGS
RATES IN EFFECT ON JUNE 7, 1954

TABLE NO 1
SHEET 8 OF 35

RP No 81

	FILING COMPANY	DESIGNATION		DESCRIPTION AND DATE OF INSTRUMENT		DATE OF TRANSMITTAL LETTER	FILING DATE	BUYER	PRICE JUNE 7, 1954 (¢ PER MCF)	CORRESPONDENCE CONTROL SERIAL NO.
		RATE SCHEDULE NO.	SUPPLEMENT NO.							
	The Texas Co.									
	Box 2332,									
6	Houston 1, Texas	86	-	Statement X Undated [10]		10-12-54	11-12-54	Sun Oil Co. East Field, Jim Hogg Co., Tex.	20.4533 [12]	153896
7	The Texas Co.	87	-	Statement Undated [11]		10-12-54	11-12-54	Sun Oil Co. Bloomberg Field, Starr and Hidalgo Cos., Tex.	20.4533 [12]	153895
8	The Texas Co.	95	-	Contract	9-19-52	9-24-54	11-12-54	Kansas-Nebraska Nat. Gas Co.	11.0 [12]	153927
9	" " "	95	1	Bill [11]	Apr., 1954	9-24-54	11-12-54	" " " Hugoton Field, Kearney Co., Kan.		
0	The Texas Co.	99	-	Contract	5-3-52	9-24-54	11-12-54	Hugoton Plains Gas and Oil Co.	11.0 [12]	153926
1	" " "	99	1	Bill [11]	Apr., 1954	9-24-54	11-12-54	" " " Hugoton Field, Seward Co., Kan.		
2	The Texas Co.	100	-	Contract	6-16-49	9-24-54	11-12-54	Cities Service Gas Co.	11.0 [12]	153922
3	" " "	100	1	Letter	9-8-49	9-24-54	11-12-54	" " "		
4	" " "	104	4	Bill [11]	June, 1954	9-24-54	11-12-54	" " " Hugoton Field, Stevens Co., Kan.		
5	The Texas Co.	101	-	Contract	4-3-50	10-20-54	11-12-54	United Gas Pipe Line Co.	10.2209a [12]	153917
6	" " "	101	1	Letter	4-3-50	10-20-54	11-12-54	" " "		
7	" " "	121	2	"	4-3-50	10-20-54	11-12-54	" " "		
8	" " "	121	3	"	2-15-52	10-20-54	11-12-54	" " " Baxterville Field, Lamar and Marion Cos., Miss.		
9	The Texas Co.	102	-	Contract	6-1-54	10-26-54	11-12-54	United Gas Pipeline Co.	12.15 [12]	153905
0	" " "	102	1	Letter	6-1-54	10-26-54	11-12-54	" " " Duck Lake Field, St. Mary and St. Martin Parishes, La.		

[fol. 275]

EXHIBIT D(4)

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

I, Joseph H. Gutride, Secretary of the Federal Power Commission, and official custodian of the records of said Commission, do hereby certify that the attached three pages are true and correct copies of pages numbers 75036, 75041 and 75159 (IP Table No. 1351, Sheet 1 of Table 2) from the minutes of the Commission's meeting of August 21, 1957.

In witness whereof I have hereunto subscribed my name and caused the seal of the Federal Power Commission to be affixed this 18th day of June A.D., 1959, at Washington, D. C.

/s/ J. H. GUTRIDE
Secretary.

(Seal)

[fol. 276]

75036

MINUTES OF THE FOUR THOUSAND FOUR HUNDRED THIRTY-SECOND MEETING

The Commission convened at 10:00 a.m. on August 21, 1957.

Present: Chairman Kuykendall, Commissioners Digby, Stueck, Connole and Kline.

The minutes of the 4423rd, 4426th and 4428th meetings of August 7, 13 and 15, respectively, were read and approved. (Chairman Kuykendall, not having been present at the above meetings, did not vote on the question of approval of the minutes. Commissioner Kline, not having been present at the meeting of August 7, did not vote on the question of approval of the minutes for that date. Commissioner Digby, not having been present at the meeting of August 15, did not vote on the question of approval of the minutes for that date.)

Chairman Jerome K. Kuykendall presented his credentials as a member of the Federal Power Commission for the term expiring June 22, 1962, by appointment of the President dated August 16, 1957. The Chairman announced that he took the required oath of office on August 16, 1957, and that copies of his commission and oath of office, in due form, have been filed with the Department of State. He presented also the following ORDER:

> Pursuant to the provisions of Section 3 of Reorganization Plan No. 9 of 1950, I hereby designate Jerome K. Kuykendall as Chairman of the Federal Power Commission.
>
> Dwight D. Eisenhower
>
> THE WHITE HOUSE,
> August 16, 1957

[fol. 277]

75041

(51) Resolution relating to Mr. Abraham W. Boynton

* * * * * * *

The Commission considered the rate filings identified on the attached Table, IP 1344, dated August 19, 1957, and decided to suspend the filings of Shell Oil Company, Operator, et al. listed on Lines 1-2, The Atlantic Refining Company listed on Lines 3-4, Oil Participations, Inc. listed on Line 5, Southeastern Gas Company listed on Lines 6-7, M. B. Chastain, et al. listed on Line 15 and Placid Oil Company, et al. listed on Lines 18-19, each for five months from the expiration of statutory notice, or the requested effective date, whichever is later, excepting the filing listed on Lines 6-7 which is to be suspended until October 1, 1957 (Commissioner Digby dissenting as to the suspension of the filing listed on Line 5) (see suspension orders, items 20 through 25 above). The periodic increases listed on Lines 10, 11, 8, 9, 12, 20, 21, 22 and 23, and the renegotiated increase listed on Lines 16-17 and the increase for operation of compression facilities listed on Lines 13-14 are to become effective 30 days after filing, or the requested effective date, whichever is later. Sinclair Oil & Gas Company (Operator), et al. is to be advised of the acceptance of the filing listed on Lines 13 and 14 by a letter noting that a change in com-

pression charge resulting from a change in hourly labor rates would constitute a change in rate. The filing companies are to be advised of the other acceptances by appropriate form letters.

* * * * * * *

The Commission considered the rate filings identified on the attached Tables 1, 2, 3, 4 and 5, IP 1351, dated August 19, 1957, and accepted all of them with no effective date specified for the supplements completing June 7, 1954 rate schedules listed on Lines 1-2, 4-5, 7-8, 10-11, 13-14, 16-17, 19-20, 22-23, 30, 33-34, 36-37, 50-51, 53-54 and 56-57 of Table 2. Waiver of notice was granted, where necessary, to permit all rate schedules listed on Table 1, all supplements listed on Table 2 not mentioned above, and all supplements listed on Table 3, to become effective on the date shown in the "Effective Date" column of the respective tables. All rate schedules listed on Table 4 are to be redesignated as shown and waiver of notice was granted to permit all notices of succession with the respective assignments on said table to become effective on the date shown in the "Effective Date" column. All rate schedules listed on Table 5 are to be redesignated as shown and waiver of notice was granted to permit all contracts and respective supplements listed on said table to become effective on the date shown in the "Effective Date" column. The filing companies are to be advised of this action by appropriate letters.

Thereupon, the Commission adjourned.

JEROME K. KUYKENDALL
Chairman

Attest:

MICHAEL J. FARRELL
Acting Secretary

PRESSURE BASE CODE
100 : 14.65 psia
101 : 15.025 psia
102 : 15.4 psia
103 : 14.9 psia
104 : 14.96 psia
105 : 14.73 psia

SUMMARY OF INDEPENDENT PRODUCER RATE FILINGS
CHANGES IN RATE FILINGS PREVIOUSLY REPORTED TO THE COMMISSION

AUG 19 1

I. P. No. 135

LINE NO.	FILING COMPANY AND MAILING ADDRESS	DESIGNATION: RATE SCHEDULE NO.	DESIGNATION: SUPPLE-MENT NO.	DESCRIPTION AND DATE OF INSTRUMENT	DATES: TRANSMITTAL LETTER	DATES: FILING	BUYER AND PRODUCING AREA	LAST PRICE PREVIOUSLY REPORTED ¢ PER MCF	INCREASE (DECREASE) ¢ PER MCF	PRICE AFTER INCREASE OR DECREASE ¢ PER MCF	PRESSURE BASE CODE	ANNUAL AMOUNT OF INCREASE (DECREASE)
1	THE TEXAS COMPANY	72	3	ORDER 12-2-53	7-24-57	7-31-57	Northern Natural Gas Co.	11.0	NOT APPLICABLE		100	NONE
2	P.O. BOX 2332	72	4	LETTER 2-22-54	7-24-57	7-31-57	(Hugoton Fld, Haskell Co. Kan.)		NOT APPLICABLE		100	NONE
3	HOUSTON 1, TEXAS.	72	5	NOTICE OF CHANGE-UNDATED	6-13-57	6-21-57			.055	11.055	100	33.
4	THE TEXAS COMPANY	98	2	ORDER 12-2-53	7-24-57	7-31-57	Kansas-Nebraska Natural Gas Co. Inc.	11.0	NOT APPLICABLE		100	NONE
5		98	3	LETTER 2-18-54	7-24-57	7-31-57	(Hugoton Fld, Kearny Co. Kan.)		NOT APPLICABLE		100	NONE
6		98	4	NOTICE OF CHANGE-UNDATED	6-13-57	6-21-57			.055	11.055	100	138.
7	THE TEXAS COMPANY	99	2	ORDER 12-2-53	7-24-57	7-31-57	Hugoton Plains Gas & Oil Co.	11.0	NOT APPLICABLE		100	NONE
8		99	3	LETTER 4-1-54	7-24-57	7-31-57	(Hugoton Fld, Seward Co. Kan.)		NOT APPLICABLE		100	NONE
9		99	4	NOTICE OF CHANGE-UNDATED	6-13-57	6-21-57			.033	11.033	100	31.
10	THE TEXAS COMPANY	100	3	ORDER 12-2-53	7-24-57	7-31-57	Cities Service Gas Co.	11.0	NOT APPLICABLE		100	NONE
11		100	4	LETTER 1-21-54	7-24-57	7-31-57	(Hugoton Fld, Stevens Co. Kan.)		NOT APPLICABLE		100	NONE
12		100	5	NOTICE OF CHANGE-UNDATED	6-13-57	6-21-57			.055	11.055	100	1403.
13	THE TEXAS COMPANY	106	4	ORDER 12-2-53	7-24-57	7-31-57	Northern Natural Gas Co.	11.0	NOT APPLICABLE		100	NONE
14		106	5	LETTER 2-23-54	7-24-57	7-31-57	(Hugoton Fld, Morton Co. Kan.)		NOT APPLICABLE		100	NONE
15		106	6	NOTICE OF CHANGE-UNDATED	6-13-57	6-21-57			.055	11.055	100	6.
16	THE TEXAS COMPANY	107	4	ORDER 12-2-53	7-24-57	7-31-57	Northern Natural Gas Co.	11.0	NOT APPLICABLE		100	NONE
17		107	5	LETTER 2-23-54	7-24-57	7-31-57	(Hugoton Fld, Seward Co. Kan.)		NOT APPLICABLE		100	NONE
18		107	6	NOTICE OF CHANGE-UNDATED	6-13-57	6-21-57			.055	11.055	100	6.
19	THE TEXAS COMPANY	108	4	ORDER 12-2-53	7-24-57	7-31-57	Northern Natural Gas Co.	11.0	NOT APPLICABLE		100	NONE
20		108	5	LETTER 2-23-54	7-24-57	7-31-57	(Hugoton Fld, Morton Co. Kan.)		NOT APPLICABLE		100	NONE
21		108	6	NOTICE OF CHANGE-UNDATED	6-13-57	6-21-57			.051	11.051	100	8.
22	THE TEXAS COMPANY	109	4	ORDER 12-2-53	7-24-57	7-31-57	Northern Natural Gas Co.	11.0	NOT APPLICABLE		100	NONE
23		109	5	LETTER 2-23-54	7-24-57	7-31-57	(Hugoton Fld, Morton Co. Kan.)		NOT APPLICABLE		100	NONE
24		109	6	NOTICE OF CHANGE-UNDATED	6-13-57	6-21-57			.055	11.055	100	7.

ION.

AUG 19 1957

I. P. No. 1351

Table 2
Sheet 1 of 4

PRICE SUBJECT TO MCF	INCREASE (DECREASE) ¢ PER MCF	PRICE AFTER INCREASE OR DECREASE ¢-PER MCF	PRESSURE BASE CODE	ANNUAL AMOUNT OF INCREASE (DECREASE)	PROPOSED EFFECTIVE DATE	EFFECTIVE DATE (WHERE SUSP.) (OTHERWISE) (ORDERED)	CORRESPONDENCE CONTROL SERIAL NO. INITIALS
0 [1]	NOT APPLICABLE		100	NONE	[1]	[1]	6835
	NOT APPLICABLE		100	NONE	[1]	[1]	7649
	.055 [1]	11.055	100	32.	7-1-57	7-1-57	Jwm
[1]							
[1]	NOT APPLICABLE		100	NONE	[1]	[1]	6846
	NOT APPLICABLE		100	NONE	[1]	[1]	7642
	.055 [1]	11.055	100	138.	7-1-57	7-1-57	Jwm
[1]							
0 [1]	NOT APPLICABLE		100	NONE	[1]	[1]	6833
	NOT APPLICABLE		100	NONE	[1]	[1]	7640
	.0739 [1]	11.0739	100	31.	7-1-57	7-1-57	Jwm
[1]							
0 [1]	NOT APPLICABLE		100	NONE	[1]	[1]	6825
	NOT APPLICABLE		100	NONE	[1]	[1]	7639
	.055 [1]	11.055	100	1402.	7-1-57	7-1-57	Jwm
[1]							
0 [1]	NOT APPLICABLE		100	NONE	[1]	[1]	6840
	NOT APPLICABLE		100	NONE	[1]	[1]	7648
	.055 [1]	11.055	100	6.	7-1-57	7-1-57	Jwm
[1]							
0 [1]	NOT APPLICABLE		100	NONE	[1]	[1]	6841
	NOT APPLICABLE		100	NONE	[1]	[1]	7647
	.055 [1]	11.055	100	6.	7-1-57	7-1-57	Jwm
[1]							
[1]	NOT APPLICABLE		100	NONE	[1]	[1]	6842
	NOT APPLICABLE		100	NONE	[1]	[1]	7646
	.055 [1]	11.055	100	8.	7-1-57	7-1-57	Jwm
[1]							
[1]	NOT APPLICABLE		100	NONE	[1]	[1]	6843
	NOT APPLICABLE		100	NONE	[1]	[1]	7645
	.055 [1]	11.055	100	2.	7-1-57	7-1-57	Jwm

[fol. 279]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Actions No. 670 and 708—1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

COLUMBIAN FUEL CORPORATION, a corporation, Defendant.

Civil Action No. 671—1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

THE TEXAS COMPANY, a corporation, Defendant.

Defendants' Reply to Plaintiff's Supplemental Memorandum—Filed July 24, 1959

* * * * * * *

[fol. 280] I

Cities Has Not Cited a Single Precedent for Its Argument That a State Court Has Jurisdiction of a Filed Rate Claim Under the Natural Gas Act.

* * * * * * *

[fol. 281] Cities' complaints in our cases are confined to assertions of common law claims. And if Cities still rests its case upon those claims, rather than upon filed rate claims, we certainly agree that jurisdiction is in this court and not a federal court. But in that event defendant would have summary judgment, for no claim resulting from these transactions is maintainable unless it is shown to have the imprimatur of the Federal Power Commission. Cf. *Montana-Dakota*, 341 U.S. at p. 249.

* * * * * * *

[fol. 282] We certainly don't disagree. If Cities here relies upon common law contract, there is, as we have just [fol. 283] said, no jurisdiction of its claim in a federal court.

* * * * * * *

[fol. 284] Again, we do not disagree. Certainly federal issues may arise and be properly decided in state court proceedings. When the plaintiff elects not to rely upon the federal law, and it is injected defensively, then the state courts alone will have jurisdiction. Moreover, even where the plaintiff relies upon the federal law, the state courts will have concurrent jurisdiction if the federal law has not provided that its jurisdiction shall be exclusive.

Winsor v. *United Air Lines*, 159 F.Supp. 856 (Del. 1958) (See CSB 12). As to *Winsor*, Cities says that Judge [fol. 285] Layton there found "that it would be necessary during the course of the trial to construe the Warsaw Convention but denied that such necessity created Federal jurisdiction."

We agree. At page 858 of his opinion Judge Layton there ruled that, since the Treaty was a matter of defense, plaintiff "did not have to plead . . . the Treaty in order to state a good cause of action." The case was therefore not removable. As we have said, we agree that if Cities here does not rely upon federal law, then this court has jurisdiction of the plaintiff's case, although fatally defective, and the federal courts do not.

* * * * * * *

[fol. 286]

IN THE SUPERIOR COURT IN AND FOR NEW CASTLE COUNTY
STATE OF DELAWARE

No. 722, Civil Action, 1958

CITIES SERVICE GAS COMPANY, a Corporation, Plaintiff,

vs.

PAN AMERICAN PETROLEUM CORPORATION, a Corporation, Defendant.

COMPLAINT—Filed June 25, 1958

Comes now plaintiff Cities Service Gas Company and for its cause of action against defendant Pan American Petroleum Corporation states:

1. Plaintiff is a citizen and a resident of the State of Delaware, it being a corporation duly organized and existing under the laws of that state.

2. Defendant is a citizen and a resident of the State of Delaware, it being a corporation duly organized and existing under the laws of that state.

3. Plaintiff and defendant on June 23, 1950, entered into a written contract designated "Gas Purchase Contract". A true copy of such contract, marked Exhibit "A", is attached hereto and made a part hereof.

Said Gas Purchase Contract, among other things, provides for:

(a) The sale and delivery by defendant to plaintiff, at the wellhead, of natural gas to be produced from certain lands in the Kansas-Hugoton Field in the State of Kansas dedicated to the fulfillment and performance of such Gas Purchase Contract.

(b) A term of twenty years from June 23, 1950, and as long thereafter as gas is produced from such lands in commercial quantities from producing zones above sea level

[fol. 287] (c) The payment by plaintiff to defendant until June 23, 1961, of:

(1) A price of 8.4¢ per Mcf measured at a pressure base of 16.4 psia for gas having a heating value of 900 or more BTU's (British Thermal Unit) per cubic foot; and

(2) a price decreased from 8.4¢ per Mcf at 16.4 proportionate to the deficiency of the heating value of such gas below 900 BTU's per cubic foot.

4. On December 2, 1953, the State Corporation Commission of the State of Kansas entered its Order in Docket No. 40,079-C (C-3216) providing that all parties taking gas from the Hugoton Gas Field in Kansas shall pay or attribute to such gas a price of not less than 11¢ per Mcf at 14.65 psia at the wellhead. A true and correct copy of such Price Order, marked Exhibit "B", is attached hereto and made a part hereof.

The effect of such Price Order, if valid, was to increase the cost to plaintiff as to:

(a) gas having a BTU content of 900 or more from 8.4¢ per Mcf at 16.4 psia to 12.6¢ per Mcf at 16.4 psia; and

(b) gas having a BTU content of less than 900 from less than 8.4¢ per Mcf at 16.4 psia to 12.6¢ per Mcf at 16.4 psia; or

when measured on a pressure base of 14.65 psia, as required by such Order, the effect of such Order, if valid, was to increase the cost to plaintiff as to:

(a) gas having a BTU content of 900 or more from 7.3¢ per Mcf at 14.65 psia to 11¢ per Mcf at 14.65 psia; and

(b) gas having a BTU content of less than 900 from less than 7.3¢ per Mcf at 14.65 psia to 11¢ per Mcf at 14.65 psia.

Such Order, if valid, imposed criminal sanctions for its violation, as provided in Secs. 55-708, 709, and 710, General

16	Does not include 1¢ per M.C.F. Louisiana gas severance tax payable by Seller and reimbursed by Buyer as per contract.								
17	Includes share of revenue from sales to Gaylord Container Corp. as per letter dated 2-25-52.								
18	Kansas Corporation Commission minimum price indicated by Div.								
19	Is Kansas minimum price								
20	Price received was prevailing price as shown on texaco records in Sun Field, Starr County, Texas. This is Auxiliary price								
21	Formal contract not yet executed.								

O.K. E.M.
10/11/54

Statutes of Kansas, 1949. Each such Kansas Statute is set out verbatim as Exhibit "c" attached hereto and made a part hereof.

[fol. 288] 5. Thereafter, by plaintiff's letter to defendant dated January 21, 1951, the letter in reply thereto from defendant to plaintiff dated January 27, 1954, and checks issued by plaintiff and accepted by defendant in payment of gas received during each gas accounting month subsequent to the effective date of said Price Order, plaintiff and defendant entered into a contract, herein called "Refund Contract", wherein, among other things, it was agreed that should such Price Order be finally judicially declared to be invalid, then defendant would refund to plaintiff any overpayment made by plaintiff to defendant on account of such Price Order.

The body of the January 21, 1954 letter (omitting date, salutation, closing and signature) reads:

"The State Corporation Commission of the State of Kansas by Order dated December 2, 1953, in Docket No. 44079-C (C-3216) directed that on and after January 1, 1953, as a condition precedent for withdrawal of gas from the Hugoton Gas Field in Kansas, there shall be paid therefor or attributed thereto, at the wellhead, a minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.).

"Cities Service Gas Company and certain other parties filed Petitions in the District Court of Finney County, Kansas, for a judicial review of the said Order.

"Pending final judicial determination of the said Order and beginning January 1, 1954, Cities Service Gas Company intends to pay for all gas purchased by it in the Kansas Hugoton Field in strict compliance with the terms and conditions of the said Order. Such compliance with said Order by this Company, however, is made to avoid the penalties and actions provided by the Kansas statutes for a violation thereof, and the payments made to you in compliance with said Order pending its final judicial determination are to be considered and accepted by you as involuntary payments

on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said Order.

[fol. 289] "In the event the said Order if finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said over-payments."

The body of the January 27, 1954 letter (omitting date, salutation, closing and signature) reads:

"This refers to your letter of January 21, 1954, relating to payments for Kansas Hugoton Gas on and after January 1, 1954 under Gas Purchase Contract dated June 23, 1950. We construe the last paragraph of said letter to mean that Cities will expect Stanolind to refund to it the amount of over-payments, if any, without any interest thereon should the said Order of December 2, 1953, be finally judicially modified or declared to be invalid in whole or in part by an adjudication which would be binding and controlling on Stanolind. We will, therefore, accept payments on this basis."

Each check issued by plaintiff and accepted by defendant in payment for gas subsequent to the effective date of said Price Order and until December 23, 1957, contained the following statement:

"In full settlement of gas purchased for the period ending *(appropriate date was here inserted on each check)*, subject to the provisions of letters dated August 25, 1953 and January 21, 1954, with reference to gas purchased in Kansas."

The letter of August 25, 1953 referred to in the foregoing statement is not material herein.

6. Plaintiff instituted an action in the District Court, Finney County, Kansas, for a judicial review of such Price Order, contending such Order was void ab initio because

the State Corporation Commission of Kansas had no jurisdiction to issue such Order. The State District Court affirmed the Order. Plaintiff appealed to the Kansas Supreme Court, which court affirmed the Order, 180 Kan. 454, 304 P. 2d 528. On appeal, the United States Supreme Court reversed the Kansas Supreme Court on January 20, 1958, —— U.S. ——, 2 L.Ed. 2nd 355.

[fol. 290] On April 14, 1958, the Kansas Supreme Court issued its Order and mandate vacating and setting aside its previous judgment affirming such Price Order.

7. By reason of the facts herein set out and under the provisions of said Refund Contract, defendant became obligated to promptly refund to plaintiff all overpayments plaintiff had made to defendant. That for gas received by plaintiff under said Gas Purchase Contract, plaintiff has made overpayment to defendant therefor in the principal sum of $10,324,468.67 during the period January 1, 1954 to and including November 22, 1957. That plaintiff has made demand upon defendant for the refund to plaintiff of said principal amount but defendant has failed, neglected and refused to make refund of such overpayments or any part thereof to plaintiff; therefore, defendant is indebted to plaintiff in the principal sum of $10,324,468.67.

8. To avoid the criminal sanctions imposed by the Kansas Statutes for the violation of said Price Order, plaintiff made the above described overpayments to defendant involuntarily, under protest in compliance with and under the compulsion of said Price Order and upon condition that defendant would promptly refund to plaintiff such overpayments if said Price Order should be finally judicially determined to be invalid, as stated in said Refund Contract.

9. By reason of the facts hereinabove stated, defendant has become obligated and indebted to plaintiff as follows:

(a) Defendant by reason of said Refund Contract is legally obligated to refund to plaintiff the aforesaid total principal sum of $10,324,468.67 with interest thereon at 6% per annum from January 20, 1958; or

[fol. 291] (b) By reason of the promulgation by the State Corporation Commission of Kansas of said Price

Order and the liabilities and criminal sanctions imposed by the Kansas Statutes for the violation of said Price Order, plaintiff was compelled involuntarily to comply with said Price Order and make such overpayments to defendant and that by reason of the final judicial determination of the invalidity of said Price Order by the United States Supreme Court, and the District Court, Finney County, Kansas, defendant became and is legally and equitably obligated to make restitution to plaintiff of such overpayments in the aforesaid principal sum of $10,324,468.67 with interest thereon at 6% per annum from January 20, 1958; or

(c) By reason of the receipt by defendant of such overpayments, involuntarily paid by plaintiff, defendant has been unjustly enriched in the aforesaid principal sum of $10,324,468.67 and thereby became and is legally and equitably obligated to restore and repay such overpayments to plaintiff with interest thereon at 6% per annum from January 20, 1958.

WHEREFORE, Plaintiff demands judgment against defendant for the principal sum of $10,324,468.67, together with [fol. 292] interest thereon at 6% per annum from January 20, 1958, and for all other relief to which plaintiff may be entitled in the premises and for costs of this action.

John J. Morris, Jr., Howard L. Williams, Of Morris, James, Hitchens & Williams, Attorneys for Plaintiff, 350 Delaware Trust Building, Wilmington, Delaware.

Conrad C. Mount, O. R. Stites, Gordon J. Quilter, Of Counsel, c/o Cities Service Gas Company, First National Building, Oklahoma City, Oklahoma.

| | | |

[fol. 293]

EXHIBIT A TO COMPLAINT

GAS PURCHASE CONTRACT

between

STANOLIND OIL AND GAS COMPANY
(Seller)

and

CITIES SERVICE GAS COMPANY
(Buyer)

Hugoton Field, Kansas

[fol. 294] GAS PURCHASE CONTRACT

THIS AGREEMENT, made and entered into as of the 23rd day of June, 1950, by and between STANOLIND OIL AND GAS COMPANY, a Delaware corporation, hereinafter referred to as "Seller", and CITIES SERVICE GAS COMPANY, a Delaware corporation, hereinafter referred to as "Buyer";

WITNESSETH: That

WHEREAS, heretofore under date of June 13, 1946, Seller and Buyer entered into a Gas Purchase Contract providing for the sale and purchase of natural gas produced or to be produced from certain lands in the Kansas-Hugoton Field, said lands being set out and designated as Area "A" on the plat attached hereto, marked Exhibit "A", and made a part hereof, which said Gas Purchase Contract was amended by letter agreements dated, respectively, June 13, 1946, December 9, 1946, July 31, 1947, June 18, 1948, and December 9, 1948, and by that certain Amendment to Gas Purchase Contract dated March 8, 1950; and

WHEREAS, Seller owns oil and gas leases covering approximately four hundred thousand (400,000) acres of land in the Kansas-Hugoton Field in addition to the lands covered by the said Contract of June 13, 1946, as amended, said additional lands being set out and designated as Areas "B" and "C" on the said plat marked Exhibit "A" which

such Exhibit "A" shall be supplemented within six (6) months from the date hereof by a complete tabulation of Seller's interest in all of the lands and leases covered by said Exhibit "A"; and

WHEREAS, Buyer, in order to meet the demands of its expanding market, desires to obtain substantial quantities of gas in addition to the quantities of gas produced or to be produced by Seller from the lands covered by the said Contract of June 13, 1946, as amended, so that Buyer will have supplies of merchantable natural gas ample to meet, insofar as prudently possible at all times and over a long period of time, the demands of its customers at the various [fol. 295] times such demands occur in its widely distributed markets; and

WHEREAS, Seller desires to sell all of its merchantable natural gas produced or to be produced from gas wells only from producing zones at depths above sea level from said additional lands and is willing to sell all of such natural gas to Buyer upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants hereof and of the dedication by Seller of additional gas reserves to Buyer's requirements, it is hereby mutually stipulated and agreed by and between the parties hereto as follows, to wit:

ARTICLE I

Supersedure

Upon execution of this agreement by both Seller and Buyer, the Gas Purchase Contract between the said parties dated June 13, 1946, as amended, above referred to, shall effective as of 7:00 o'clock a.m. Central Standard Time, June 23, 1950, be superseded by this agreement and shall be of no further force and effect from and after said time and date.

ARTICLE II

Definitions

As used in this agreement, the following terms, words, and phrases shall have the following meanings:

1. *Dedicated Reserves* shall mean Seller's gas rights in and to the gas producing zones at depths above sea level covered by lands and leases set out as Areas "A", "B", and "C" on the plat attached hereto and marked Exhibit "A".

2. *Natural Gas* or *Gas* shall mean gas produced from gas wells only from producing zones at depths above sea level, and does not include gas produced from zones from any other depth or gas produced from oil producing formations in conjunction with the production of oil.

3. *Deliverability* shall mean that quantum of measurement of the productive capacity of a well as defined by the rules, regulations, and order of the State Corporation Commission of Kansas as now determined or hereafter fixed, [fol. 296] and in the event and whenever such deliverability shall cease to or not be defined by the State Corporation Commission of Kansas or some other State or Federal regulatory body having lawful jurisdiction and authority, then by such reasonable determination as the parties may agree upon, or, failing therein, a fair standard for the determination of the ability of the various wells in the Kansas-Hugoton Field to produce gas against a reasonable percentage of the average seventy-two (72) hour shut-in pressure of all the wells in the Kansas portion of said Field.

4. A *Commercial Well* shall mean any well having an initial deliverability of at least 100 MCF of gas per day having an average gross heating value or not less than 700 BTU's per cubic foot.

5. The term "average gross heating value" shall mean the number of BTU's produced by combustion at constant pressure of the amount of gas saturated with water vapor which would occupy a volume of one cubic foot at a temperature of sixty degrees Fahrenheit (60° F.) and under a pressure equivalent to that of thirty (30) inches of mercury at thirty-two degrees Fahrenheit (32° F.) and under the

standard gravitational force (the acceleration 980.665 c.m. per. sec. per. sec.), with air of the same temperature and pressure as the gas when products of combustion are cooled to the initial temperature of gas and air and when the water formed by combustion is condensed to the liquid state.

6. *Fiscal Accounting Month* shall mean that period of time extending from the 23rd day of each calendar month to the 22nd day, inclusive, of the next succeeding calendar month.

ARTICLE III

Seller's Reservations

Seller hereby expressly reserves and excepts from the terms of this agreement such quantities of gas produced from the acreage described on Exhibit "A" as may at all times and from time to time be required by Seller in its sole opinion and discretion as a prudent operator for the following purposes:

1. Fuel when required to drill oil or gas wells on such acreage or on Seller's adjacent acreage and for all other operation requirements incident thereto;

[fol. 297] 2. Fuel when required for use in internal combustion engines employed in lifting oil to the surface of the ground from any oil well hereafter drilled on such acreage;

3. Fuel for stoves and inside lights in the principal dwelling located on the leaseholds covering such acreage, to the extent required by the present oil and gas leases on such acreage and to supply gas required under right-of-way and similar agreements.

4. Fuel for irrigation purposes to the extent reasonably required by Seller in the operation of its oil and gas properties.

Seller hereby expressly reserves and excepts from the terms of this agreement all of the liquid and liquefiable hydrocarbons contained in the gas produced from said Areas "A" and "B" specified on Exhibit "A" and removed from said gas by Seller under the same terms and condi-

tions as set out in that certain Processing Agreement between the parties hereto dated June 23, 1950, in its Stano gasoline plant located in Section 5, Township 29 South, Range 38 West, Grant County, Kansas, as the same may exist from time to time.

The obligations of Seller hereunder are subject to the ability of Seller's wells to produce without waste and in accordance with prudent gas field practice. The control and operation of Seller's land and leaseholds producing gas sold to Buyer hereunder shall be and remain the exclusive right of Seller.

ARTICLE IV

Dedication

1. Subject to Seller's reservations and subject to the right of substitution, withdrawal, surrender, and disposal of acreage and gas rights under the terms and limitations of this agreement, Seller hereby dedicates to the fulfillment and performance of this agreement all of the dedicated reserves, together with all commercial gas wells drilled thereon as herein contemplated, and Seller agrees and covenants to maintain, at its own cost and expense, the dedicated reserves and substitutions therefor in full force and effect [fol. 298] until such dedicated reserves are either perpetuated by production of gas wells drilled on such acreage or released from dedication as herein provided, or until such lands and leases or portions thereof are proven unproductive of gas in commercial quantities, or until such leases or portions thereof have been tendered to Buyer as herein provided.

2. Seller shall have the right from time to time during the term of this agreement to substitute acreage of equal value and extent for a like amount of acreage described and included in Exhibit "A" (or acreage substituted therefor) upon the following conditions:

(a) Seller shall first obtain the written approval of Buyer to such substitution, and Buyer agrees that it will not capriciously or unreasonably withhold its approval, except that Seller shall have the right without

the consent of Buyer to exchange or trade acreage dedicated hereunder with any acreage in the Kansas-Hugoton Field dedicated to the same market to which Buyer is selling gas. Seller immediately shall notify Buyer of any such exchange or trade.

(b) Any acreage so substituted shall upon substitution immediately be dedicated in the same manner and to the same extent theretofore attaching to the acreage described in Exhibit "A" (or acreage substituted therefor) for which other substitution is made.

(c) Seller shall prepare and forward to Buyer for execution a written release in recordable form, which Buyer will execute and acknowledge, which by its terms shall release from the dedication the acreage specified in Exhibit "A" (or acreage substituted therefor) for which other acreage has been substituted.

(d) Seller shall have the right, without the consent of Buyer, to rearrange and adjust acreage comprising its existing and future production units in order to comply with existing and future orders of the State Corporation Commission of Kansas, including the right to exchange acreage for such purposes, and in such event Seller shall immediately notify Buyer of such action.

[fol. 299] 3. Seller agrees that it shall endeavor in good faith to keep and maintain all of its leases on said lands covered by Exhibit "A" in full force and effect. If at any time Seller deems any of its leases or any part thereof to be condemned and no longer of any value or undesirable for it to keep or develop, it shall tender to Buyer, at least sixty (60) days prior to the expiration date of any such lease, an assignment of such lease or leases or portions thereof which Seller wishes to surrender. If Buyer fails to accept such assignment within thirty (30) days after the date of tender thereof, then Seller may at its option release and surrender or otherwise dispose of such lease or portions thereof. If Buyer accepts such assignment of any lease or portion thereof upon which there is a gas well, Buyer

shall pay to Seller the reasonable salvage value of the well and the casing and equipment therein and thereon and used in connection therewith.

ARTICLE V

Sale and Purchase

1. Subject to and in accordance with the terms of this agreement, Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and receive all gas produced from the dedicated reserves and acreage substituted therefor as hereinabove provided. It is understood that said Exhibit "A" indicates lands and leases in which Seller owns either the entire gas rights or only a partial interest therein, and in this connection it is agreed by Seller and Buyer that Seller is only selling and Buyer is only purchasing the gas produced from such acreage which is attributable to Seller's interest therein, whatever that interest may be. Seller shall deliver gas hereunder to Buyer in such volumes and at such times as requested by Buyer up to the delivery capacity of the wells of Seller located on the acreage specified in Exhibit "A", provided, however, that Seller shall not be required to operate its wells in a manner not conforming to usual good practice in the industry.

2. Subject to the ability of Seller's wells to produce without waste in accordance with good gas field practice and to the requirements relating to quality as set forth in Article XI hereof, Buyer agrees that, with respect to and within [fol. 300] the limits of its markets to which Buyer shall deliver gas purchased hereunder and subject to paragraph 3 of this Article V it shall, insofar as possible, purchase and take from each well covered hereby natural gas ratably with its takes of natural gas from all other wells in the Kansas-Hugoton Field for such markets or, if it is not possible so to do, then in any event Buyer shall purchase and take from the acreage covered hereby an aggregate quantity of natural gas ratably with its takes of natural gas from all other acreage in the Kansas-Hugoton Field for such markets. It is recognized and agreed that in taking natural gas ratably Buyer will be unable, due to varying operating conditions, to withdraw natural gas in exact

ratable proportions during any specific month, but Buyer agrees that to the best of its ability it will maintain said ratable purchases hereunder by balancing excesses against deficiencies during each twelve (12) months period ending January 22. If during the year preceding any January 22 Buyer has taken less or more than Seller's ratable share of Buyer's market, and within twelve (12) months thereafter has been unable to bring such ratable takes in balance, then Buyer shall pay Seller for deficiencies in takes within thirty (30) days thereafter. "Ratably" or "Ratable" as used herein means in proportion to well allowables lawfully fixed and determined by the State Corporation Commission of Kansas, and if well allowables shall cease to be fixed and determined by said Commission or other regulatory body having jurisdiction thereover, then in proportion to the deliverability of the wells and the acreage attributable thereto from which Buyer shall be producing or purchasing gas in the Kansas-Hugoton Field for the same market.

3. Buyer shall construct and shall at all times maintain a gathering system, complete with pipe lines and compression equipment, in conformity with general practice of other gatherers in the Hugoton Field, however, in the event and whenever the quantities of gas which Buyer is obligated to take from Seller under Section 2 hereof shall not be sufficient with respect to any lease on acreage covered hereby to (1) prevent drainage of the same by wells of others or (2) prevent loss of such lease by Seller, then within thirty (30) days after written notice by Seller to Buyer of either [fol. 301] of such facts, Buyer shall commence taking gas from the well or wells located on such lease acreage in sufficient quantities to prevent such drainage or loss of such lease if such well or wells are able to deliver such quantities of gas into Buyer's facilities, or, if such well or wells are only able to deliver at pressures appreciably less than offset wells and therefore are not so able to deliver into Buyer's facilities, Buyer shall so long as such condition exists take such measures as may be necessary to prevent loss or forfeiture of such lease by Seller. Nothing in this paragraph 3 shall operate to increase Buyer's obligation to take an aggregate quantity as provided in paragraph 2 of this Article V.

4. So far as practicable, Seller shall deliver to Buyer and Buyer shall take gas hereunder continuously, having due regard for the seasonal variation in the receipts of all gas by Buyer for the same market. Buyer agrees to notify Seller of any substantial increase in its daily requirements, and Seller agrees to notify promptly the designated agent for Buyer, or such other agent as may be agreed upon between the parties, of any interruptions affecting the delivery of gas hereunder, and also in order to meet current fluctuations in the requirements of Buyer, Seller shall begin, increase, decrease, or suspend the delivery of gas hereunder on the telephonic orders of such designated agent or such other agent.

ARTICLE VI

Development and Connection

1. At the date of this agreement the acreage specified as Areas "A", "B", and "C" has not been fully developed for the production of gas. It is recognized by the parties hereto that Buyer's markets must be further developed and expanded in order to enable Buyer to absorb the additional quantities of gas purchased by it hereunder and that Seller must drill and complete additional wells on the acreage dedicated hereunder in order to supply such gas to Buyer. In this connection it is agreed by the parties hereto that, to the best of their abilities and to the greatest extent practicable in accordance with prudent operations, the rate of development of such acreage shall be commensurate with [fol. 302] the rate of development and expansion of Buyer's market. To this end Seller and Buyer agree to use due diligence in complying with the respective obligations imposed upon them by the provisions of this Article VI, but it is agreed that if either party is unable to comply with its said obligations because of inability due to force majeure to obtain pipe or other material and equipment necessary for its compliance with any such obligation within the performance period applicable thereto, then such period shall be extended until the necessary pipe or other material and equipment can be obtained and the required construction of facilities or drilling can be completed. Nothing in this para-

graph shall be construed as in any way limiting or restricting the scope or applicability of Article XVI (Force Majeure) of this agreement.

On and after the date of this agreement, Buyer shall connect to all commercial wells drilled by Seller in said Area "A" as provided in paragraph 2 (a) of this Article VI.

From the date of this agreement until January 1, 1956, for said Areas "B" and "C" it is anticipated that the gathering system expenditure schedule as set out in the table below is adequate to meet the estimated development schedule also set out in the table below in order to permit connection by Buyer to the wells so drilled as selected by Seller; however, if the expenditure schedule is inadequate to connect all wells so scheduled, then Seller shall either curtail the development rate or shall designate the order in which such wells shall be connected, and Buyer shall be obligated to connect wells as designated up to but not exceeding the cumulative expenditures by the end of any year set out in the table below.

Year	Estimated Number of Wells Drilled, to Be Drilled or Caused to Be Drilled by Seller		Cumulative Maximum Direct Expenditure for Gathering System and Well Connections by Buyer by the End of Each Year	
	Area B	Area C	Area B	Area C
1950				
1951	115	37	$3,291,000	$2,044,000
1952	44	48	3,636,000	2,625,000
1953	74	69	4,366,000	3,952,000
1954	34	51	4,676,000	4,466,000
1955	8	20	4,774,000	4,672,000
TOTAL	275	225		

[fol. 303] From and after January 1, 1956, Buyer shall connect to all commercial wells drilled by Seller in said Areas "B" and "C".

2. Buyer, subject to the provisions of Section 1 of this Article VI, and Section 3 of Article V, shall connect all commercial wells completed by Seller on the acreage cov-

ered hereby to its gathering system and thereafter purchase and pay for the gas produced therefrom under the terms of this agreement so long as such well is capable of producing against at least ~~50~~ psig flowing pressure. The time for such connection to be made by Buyer for each well in each of said areas shall be as follows:

(a) *Area "A"*: Within sixty (60) days after the receipt by Buyer of notice by Seller that a commercial well has been completed thereon;

one hundred twenty (120) S.B.
(b) *Areas "B" and "C"*: Within ~~sixty (60)~~ days after JE
receipt by Buyer of notice by Seller that a commercial well has been completed thereon or on June 1, 1951, whichever is the later date; provided, however, if at any time prior to June 1, 1951, Seller has a well on a lease which is in danger of forfeiture for lack of market, then Buyer shall within thirty (30) days after receipt of notice from Seller of such fact (i) begin or cause the purchase and receipt of gas from such well, or (ii) take such measures as may be necessary to prevent loss or forfeiture of such lease, or (iii) release such well and lease from the terms of this agreement.

If Buyer fails to receive and purchase the gas tendered from any well on the dates required hereunder, Buyer shall nevertheless pay for the quantity of gas which could have been produced and sold to Buyer hereunder if Buyer had commenced taking the gas within the time herein provided. Such payments shall continue until actual deliveries are commenced, and payments made for gas not actually taken shall be considered as damages for Buyer's failure to comply herewith, and Buyer shall not have the right to later receive free of cost any gas to replace the gas so paid for but not taken.

3. If and whenever during the term of this agreement the operation of any well covered hereby shall become unprofitable to Seller, in its sole opinion, Seller shall have [fol. 304] the right to tender an assignment of such well and the acreage allocated thereto to Buyer and if Buyer

does not accept such assignment within sixty (60) days after such tender, then Seller shall have the right to abandon such well and thereby release it from the terms of this agreement.

4. It is recognized by the parties hereto that Seller is presently selling gas to other purchasers on the acreage dedicated hereunder from the following gas wells:

Well Designation	Located In	Purchaser	Earliest Contract Termination Date	Notice Required to Terminate
Waechter "H"	6-26-37	Colo. Inter.	3-1-51	6 mos.
Waechter "F"	7-26-37	" "	30 days	30 days
Willets "B"	15-26-38	" "	*10-16-52	One Day
Seymer "B"	7-25-36	" "	4-1-51	6 mos.
Dan	2-25-37	" "	*10-16-52	One Day
Campbell "D"	3-25-37	" "	*10-16-52	One Day
Shell	4-25-37	" "	*10-16-52	One Day
Seymer "A"	12-25-37	" "	4-1-51	6 mos.
Strawn	14-25-37	" "	1-1-51	6 mos.
Gate-Hutton	28-25-37	" "	3-1-51	6 mos.
J. D. Hillman	27-24-37	" "	90 days	90 days
J. G. Morris	36-23-36	" "	*10-16-52	One Day
Shields	4-25-35	Kans.-Nebraska	Day to day	One Day
White "B"	6-25-36	" "	30 days	30 days
Crawford	7-24-34	" "	30 days	30 days
Martin	14-24-35	" "	30 days	30 days
Cohen	15-24-35	" "	6 mos.	6 mos.
Felton	16-24-35	" "	30 days	30 days
Dodge City	17-24-35	" "	2-8-51	30 days
Entrup	18-24-35	" "	2-11-51	30 days
Orr	31-24-35	" "	30 days	30 days
Greve	11-25-33	Northern Nat'l	10 days	10 days

*If not terminated by 10-16-52 will remain committed until 2-14-67.

It is agreed that Seller shall cancel said contracts on the earliest date respectively permitted thereunder after receiving notice from Buyer that it has completed gathering facilities adequate to take the gas produced from the wells covered by said contracts or that Buyer desires to have

such contracts canceled. As and when each of said contracts has been canceled by Seller, Buyer shall forthwith connect or arrange for the connection of the wells covered thereby so that an uninterrupted flow of gas from these wells may be maintained. Buyer agrees to use its best efforts to construct and complete its gathering system or portion thereof, [fol. 305] at such times as are equivalent to the earliest dates on which each of said contracts may be canceled.

ARTICLE VII

Delivery Point

1. The points of delivery for all gas sold and purchased hereunder shall be at the mouths of the respective wells on the acreage covered hereby.

2. Insofar as Seller is able to convey such rights, Buyer shall have and it is hereby granted an easement and servitude on the acreage covered hereby for installing, operating, and maintaining equipment used in conjunction with the measurement and removal of gas sold and purchased hereunder, shall have the right to operate, inspect, and test such equipment at any time, and shall have free access at all times to any part of Seller's leaseholds for any purpose connected with any matter or thing covered by this agreement.

3. Seller shall be deemed to be in control and possession of the gas deliverable hereunder and responsible for any damage or injury caused thereby until said gas shall have been delivered to Buyer at the delivery points herein provided, after which delivery Buyer shall be deemed to be in exclusive control and possession of the gas and responsible for any injury or damage caused thereby except for the interval during which the gas is being processed by Seller.

ARTICLE VIII

Term

This agreement shall remain in full force and effect from the date hereof for a period of twenty (20) years from said date and as long thereafter as gas shall be produced from

the acreage covered hereby in commercial quantities from producing zones above sea level.

ARTICLE IX

Price and Payment

1. Buyer shall pay Seller for all gas purchased by it hereunder the price of 8.4 cents per 1,000 cubic feet until June 23, 1961.

[fol. 306] 2. For all natural gas purchased by Buyer from and after June 22, 1961, the price of such gas shall be the fair and reasonable price for each successive five (5) year period thereafter based on and compared with the price for gas then being paid by other purchasers in the field under similar contracts and conditions, but in no event shall the price be less than 12 cents per 1,000 cubic feet.

3. It is expressly stipulated that the delivery of gas by Seller under this agreement shall not be interrupted because of delay in the determination of the applicable price and the delivery of gas shall continue at the previous effective price. Upon determination of the new price, the price shall be applied retroactively to gas sold during the period when the price was undetermined.

4. If during any fiscal accounting month as herein defined the average gross heating value of the gas delivered by Seller from either the acreage designated as Area "C" on Exhibit "A" or the composite stream from the acreage designated as Areas "A" and "B" on Exhibit "A" shall fall below 900 BTU's per cubic foot, then the price applicable hereunder to be paid by Buyer to Seller for gas delivered during such month from said Area "C" or said Areas "A" and "B" shall be decreased proportionately to the deficiency in gross heating value below 900 BTU's per cubic foot; provided, however, if during any fiscal accounting month, as herein defined, the average gross heating value of the composite stream of the gas delivered by Seller from said Areas "A" and "B" shall fall below 925 BTU's per cubic foot as the result of the processing of such gas by Seller, then the price applicable hereunder to be paid

by Buyer to Seller for such gas delivered during such month shall be decreased proportionately to the deficiency in gross heating value below 925 BTU's per cubic foot.

5. Buyer shall render to Seller a statement on the 5th day of each calendar month showing the quantity of gas taken by Buyer hereunder during the next preceding fiscal accounting month. Payment for the quantity of gas reported on such statement shall be made by check delivered to Seller on the 25th day of the same calendar month. Seller may accept such statement and the payment based thereon, [fol. 307] and in the event the same is found incorrect under the provisions hereof, adjustments and payments shall be made accordingly.

ARTICLE X

Measurement

1. The unit of measurement for natural gas sold and purchased hereunder shall be a cubic foot of gas, and the term "cubic foot of gas" wherever used in this agreement shall mean a cubic foot of gas at 16.4 pounds absolute pressure per square inch and at a temperature of sixty degrees (60°) Fahrenheit; provided, however, the unit of measurement for the determination of heating value, hydrogen sulfide content, and sulfur content shall be a cubic foot of gas saturated with water vapor at an absolute pressure of thirty (30) inches of mercury and a temperature of sixty degrees (60°) Fahrenheit.

2. The volume of gas delivered hereunder shall be measured at prevailing meter pressures, and the volume thereof shall be computed on a pressure base of 16.4 pounds per square inch absolute and on a temperature base of sixty degrees (60°) Fahrenheit. It is assumed and agreed that the gas delivered hereunder obeys Boyle's Law and the flowing temperature of the gas in the meter is sixty degrees (60°) Fahrenheit.

The volume shall be computed in accordance with the method prescribed in Gas Measurement Report No. 2, American Gas Association, including the appendix thereto, as published May 6, 1935, or such revisions as may be

mutually agreed upon. It is assumed and agreed that the values of the Reynolds number factor and the expansion factor are one. Specific gravity determinations for the purpose of measurement computations shall be made semi-annually at each meter in accordance with an approved method, and these determinations so made shall be used for calculating the volume of gas delivered hereunder.

3. Buyer at its own cost and expense shall install and maintain in accurate repair at the points of delivery hereunder orifice meters of ample size and type and of standard manufacture for the accurate measurement of gas delivered hereunder, and Buyer shall cause said meters to be read at [fol. 308] proper intervals. The meters and respective meter readings and meter charts of Buyer shall be at all reasonable times accessible to inspection and examination by Seller. The meters shall be calibrated once each month and the orifice plates shall be inspected and calipered at least once each year by and at the expense of Buyer but in the presence of a representative of Seller, if Seller so elects. Reading, calibration, and adjustment of Buyer's meters and changing of charts shall be done only by Buyer, but all data with respect thereto shall at all reasonable times be available to Seller. It is recognized that in some instances it may be impractical to locate said meters at the point of delivery. If in Buyer's opinion it is desirable to locate any meter elsewhere on the lease, then Buyer agrees in such instances to pay Seller for any substantial loss of gas occurring between the point of delivery and such meter.

4. Seller may at its option and expense install and operate check meters to check Buyer's meters, but measurement of gas for the purposes of this agreement shall be by Buyer's meters. Check meters shall be of the orifice type and shall be subject at all reasonable times to inspection or examination by Buyer, but the reading, calibration, and adjustment thereof and changing of charts shall be done only by Seller.

5. If any meter of Buyer's is found to be inoperative or inaccurate, it shall be adjusted to register correctly. The amount of the error shall be determined by the most accurate method found feasible, and if the error is more

than two per cent (2%) in the measurement of gas, then the calculated deliveries of gas through such meter shall be adjusted to zero error to compensate for such error. Such adjustment shall be made for such period of inaccuracy as may be definitely known, or if not known, then for one-half the period since the date of the last test.

ARTICLE XI

Quality

1. All gas delivered by Seller to Buyer under the terms of this agreement shall conform to the following specifications:

[fol. 309] (a) The gas shall not contain in excess of one grain of hydrogen sulfide per 100 cubic feet and shall not contain in excess of twenty (20) grains of total sulfur per 100 cubic feet;

(b) The gas shall not contain oxygen in excess of one per cent (1%) by volume;

(c) The gas delivered at each delivery point shall be commercially free from solid matter, dust, gums, and gum forming constituents which might interfere with its merchantibility or cause injury to or interfere with the proper operation of the lines, regulators, meters or other appliances through which it flows.

(d) The gas shall be practically free of water, crude oil, impurities and other objectionable substances, and Seller shall use every reasonable effort to keep the gas entirely free from such liquids and objectionable substances, but shall not be required to install and operate dehydration facilities.

Buyer shall have the right at its election to discontinue or curtail purchases of gas which does not conform to the above specifications.

In the event Buyer shall discontinue taking gas from any well by reason of any of the provisions of this Article, and if in Seller's opinion the gas from such well could not be made acceptable to Buyer by diligent effort, Seller shall

thereafter have the right to use or sell the gas from any such well to others free of this contract, and upon written request by Seller the well and the acreage allocated thereto shall thereafter be released from the terms of this contract by Buyer.

ARTICLE XII

Taxes

As between the parties hereto, Seller shall bear or be responsible for the payment of all taxes assessed upon or in respect to the gas produced, sold, and delivered hereunder up to the delivery thereof to Buyer, and Buyer shall bear or be responsible for the payment of all taxes assessed upon or in respect to such gas on and after such delivery, except that Buyer shall pay Seller for 65 per cent of the [fol. 310] amount by which from month to month the total of all excise taxes hereafter levied and assessed with respect to the gas produced, sold, and delivered by Seller to Buyer hereunder exceeds the total of all such taxes now levied and assessed with respect to such gas at the date of this agreement, provided that Buyer shall not be obligated to pay for any part of such excess amount attributable to any new or additional tax or taxes which is based upon or measured by the natural gasoline or other liquefied hydrocarbon content extracted from the gas. This payment shall be made from month to month as the taxing agency's rights to collect such taxes accrue and as Buyer pays for gas billed to it hereunder for the preceding month. In no event shall this clause be construed to impose on Buyer any obligation to bear any portion of any ad valorem tax, income or excess profits tax, capital stock or franchise tax assessed against Seller.

ARTICLE XIII

Regulatory Bodies

This contract is subject to all present and future valid laws and lawful orders of all regulatory bodies now or hereafter having jurisdiction of the parties.

ARTICLE XIV

Warranty of Title

Seller hereby warrants title to the gas sold hereunder and the right of Seller to sell the same, and Seller warrants that all such gas is owned by Seller free from all liens and adverse claims, including liens to secure payment of production taxes, severance taxes, and other taxes. Seller shall at all times have the obligation to make settlements for all royalties due and payments to Seller's mineral and royalty owners and to make settlements with all other persons having any interest in the gas sold hereunder, and Seller agrees to indemnify Buyer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses, and expenses arising from or out of adverse claims of any and all persons to said gas or to royalties, taxes, license fees or charges thereon which are applicable before the title thereto passes to Buyer or which may be levied and [fol. 311] assessed upon the sale thereof to Buyer subject to the terms of Article XII. In the event of any adverse claim of any character whatsoever being asserted in respect to any of said gas, Buyer may retain as security for the performance of Seller's obligations with respect to such claim under this Article the purchase price thereof up to the amount of such claim, without interest, until such claim shall have been finally determined, or until Seller shall have furnished surety bond to Buyer conditioned for the protection of Buyer with respect to such claim.

ARTICLE XV

Indemnity

Each of the parties hereto assumes full responsibility and liability in the maintenance and operation of its respective properties and those under the respective control of said parties and agrees to indemnify and save harmless the other party from all liability and expense on account of any and all damages, claims, actions, costs and expenses, including injury to and death of persons arising from any act or accident in connection with the installation, presence, maintenance, and operation of the property and equipment of the indemnifying party.

ARTICLE XVI

Force Majeure

In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing, or by telegraph, to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

[fol. 312] The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension, and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a) in those instances where any party hereto is required to obtain servitudes, rights-of-way grants, permits or licenses to enable such party to fulfill its obligation hereunder, the inability of such party to acquire, or the delays on the part of such party in aquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, rights-of-way grants, permits or licenses, and (b) in those instances where any party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligation hereunder, the inability of such party to acquire, or the

delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permission.

It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

ARTICLE XVII

Miscellaneous

1. Any notice or notices given by either party under the [fol. 313] terms of this agreement shall be sent by registered mail to the following addresses:

(a) Cities Service Gas Company
First National Building
Oklahoma City 1, Oklahoma

(b) Stanolind Oil and Gas Company
Post Office Box 591
Tulsa 2, Oklahoma

The address of either party hereto may be changed under this Section at any time upon written notice. The date of service by mail shall be the date on which such written notice is deposited in the United States Post Office addressed as above provided and with all postage and charges fully prepaid.

2. Seller and Buyer mutually covenant and agree that if at any time during the term of this agreement either party shall sell or otherwise dispose of any of its properties or arrange for the operation thereof which are applicable to or used in the performance of this agreement, such sale, disposition, or arrangement shall only be made to or with a responsible party and shall be made specifically subject to this gas purchase contract; provided, however, that nothing herein contained shall be construed to prevent

either party from pledging all or any portion of its property as security under any mortgage, deed of trust, or other similar lien.

3. It is hereby agreed that this agreement shall be subject to the condition that nothing herein shall be construed as affecting any of the relations between the United States and its lessee, particularly in matters of gas waste, taking royalty in kind and the method of computing royalties due as based on a minimum valuation and in accordance with the terms and provisions of the oil and gas operating regulations applicable to the lands covered by this agreement, and subject to any condition, modification, or revocation that may be prescribed upon review thereof by the Director, Geological Survey, United States Department of the Interior.

4. This agreement and each of its covenants and obligations shall inure to the benefit of and be binding upon the successors, trustees, and assigns of the parties hereto.

[fol. 314] IN WITNESS WHEREOF the parties hereto have duly executed this agreement as of the date first above written.

STANOLIND OIL AND GAS COMPANY

By /s/ J. E. ROUF
Vice President

ATTEST:

/s/ (Illegible)
Assistant Secretary

[SEAL]

CITIES SERVICE GAS COMPANY

By /s/ S. B. IRELAN
President

ATTEST:

/s/ W. R. MORTON
Secretary

[SEAL]

[fol. 315] ACKNOWLEDGMENTS

STATE OF OKLAHOMA)
) SS
COUNTY OF TULSA)

Before me, the undersigned, a Notary Public in and for said County and State on this 26th day of July, 1950, personally appeared J. E. ROUK, to me known to be the identical person who subscribed the name of the maker thereof (STANOLIND OIL AND GAS COMPANY) to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

/s/ MARJORIE T. WELCH
Notary Public

My Commission expires November 30, 1950.

[SEAL]

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public in and for said County and State on this 27th day of July, 1950, personally appeared S. B. IRELAN, to me known to be the identical person who subscribed the name of the maker thereof (CITIES SERVICE GAS COMPANY) to the foregoing instrument as its President and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

/s/ ROSEMARY BERNEY
Notary Public

My Commission expires Feb. 25, 1954.

[SEAL]

[fol. 316]

EXHIBIT B TO COMPLAINT

STATE CORPORATION COMMISSION
STATE OF KANSAS

No. 9856

[Emblem]

COMMISSIONERS
JEFF A. ROBERTSON · CHARLES M. WARREN · DE WITT M. STILES

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, RAYMOND B. HARVEY,

Secretary of the State Corporation Commission of the State of Kansas, do hereby certify that the following and hereto attached is a true copy of Memorandum Opinion and Order as entered by this Commission on December 2, 1953:

In the matter of the application of certain royalty owners in the Hugoton Gas Field requesting orders as to a fixed price and measurement regulations in said Hugoton Gas Field.	)))))	DOCKET NO. 44,079-C (C-3216)

the original of which is now on file and a matter of record in this office.

IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the seal of the State Corporation Commission.

Done at the City of Topeka, this 30th day of June A.D. 1954

/s/ RAYMOND B. HARVEY
Secretary, State Corporation Commission.

(SEAL)

wh

[fol. 317]

BEFORE THE STATE CORPORATION COMMISSION

OF THE STATE OF KANSAS

In the matter of the application of certain royalty owners in the Hugoton Gas Field requesting orders as to a fixed price and measurement regulations in said Hugoton Gas Field.	)	DOCKET NO. 44,079-C (C-3216) CONSERVATION DIVISION

ORDER

Now on this 2nd day of December, 1953, the above-entitled matter comes before the Commission for further consideration and final disposition. The Commission, having examined the petition, files and record, and being fully advised in the premises, finds:

1. That the petition herein was filed by the Southwest Kansas Royalty Owners Association, a non-profit corporation, and certain individuals who are the owners of minerals in place or royalty interests in the Hugoton Gas Field, and that it is a petition for a new minimum wellhead price in said field of 14 cents per M.c.f. on a pressure basis of 16.4 pounds per square inch or in the alternative not less than 12 cents per M.c.f. measured on a pressure basis of 14.65 pounds per square inch.

2. That after due notice a public hearing was scheduled at the Allis Hotel, Wichita, Kansas, on September 26, 1952, at which time on motion of certain intervenors the matter was continued to October 20, 1952, in Topeka, and that hearings were held thereon at Topeka on October 20, 21, 22 and 23, 1952, December 15, 16, 17, 18 and 19, 1952, and January 14, 15 and 16, 1953.

[fol. 318] 3. That appearances were entered on behalf of the following: Southwest Kansas Royalty Owners Association and certain individual petitioners by Howard T. Fleeson, Dale M. Stucky, both of Wichita, and A. E. Kraemer, Hugoton, their attorneys; Northern Natural Gas

Company by its attorneys Lawrence I. Shaw, Omaha, Nebraska, and Mark Adams, Wichita; Panhandle Eastern Pipe Line Company by its attorneys Edward H. Lange, Kansas City, Missouri, Louis R. Gates, Kansas City, Kansas, and Mark Adams, Wichita; Cities Service Gas Company by its attorneys O. R. Stites, Sr., and Joe Rolston, both of Oklahoma City, Oklahoma, Mark Adams, Wichita, and O. R. Stites, Jr., of Topeka; Kansas-Nebraska Natural Gas Company by its attorneys James Conway, Hastings, Nebraska, and M. F. Cosgrove, Topeka; Kansas-Colorado Utilities by its attorney Harold Bolton, Abilene. Other appearances include: Consumers Cooperative Association, et al. by their attorney Phillip Dergeance, Lawrence; Lehigh Portland Cement Company by its attorney Frederick G. Apt, of Iola, and R. F. Jones; Coleman Company of Wichita by A. A. Knapp; the Office of Price Stabilization by its attorney Frank Theis of Arkansas City; the Eastern Kansas Gas Company of Iola, by J. H. Page and John McNally, both of Iola; Kansas Association of Municipal Utilities by its attorney Charles W. Lower, Kansas City, Kansas. That the following attorneys appeared on behalf of cities of Kansas as their respective city attorneys: James W. Wallace, Scott City; C. J. Brenneisen, Kansas City, Kansas; O. C. Jordan, Beloit; Casey Jones, Hill City; Corwin Spencer, Oakley; H. D. Oelschlaeger, Plainville; Max Jones, Goodland; Sam W. G. Lowe, Colby; F. A. Sloan, Hoxie; Charles Stough, Lawrence and Fred [fol. 319] W. Aley, Wichita; that James A. McClure, Robert L. Webb, Ralph W. Oman, all of Topeka, and Jerome M. Joffee of Kansas City, Missouri, [since deceased] appeared, representing a group of protesting cities. Jay Kyle, General Counsel and R. C. Woodward, Special Counsel, appeared for the Commission and the public generally. That the Commission has jurisdiction of the subject-matter and of the parties.

4. That since the public hearings referred to in Finding No. 2, the Commission entered an order on May 20, 1953, in its Docket No. 34,780-C (C-1825) changing the definition of "Gas, Cubic Foot," as defined by Commission Rule 82-2-201 adopted December 24, 1947, and on file with the

Revisor of Statutes pursuant to Laws 1947, Chapter 440. That said order made specific findings relating to the obsolescence of its former rule relating to "Gas, Cubic Foot," which was statewide in its application, and as a result thereof adopted a new definition of "Gas, Cubic Foot," pursuant to its statutory authority (G. S. 1949, Chapter 55, Article 7, as amended). That said definition applies to each and every gas field in the State of Kansas except those wells specifically prohibited from regulation by the proviso in G. S. 1949, 55-703, and applies to all withdrawals of gas in the State of Kansas since July 1, 1953, 12:01 a.m.; said rule as amended is currently on file with the Revisor of Statutes in accordance with G. S. 1949, 77-405 et seq.

5. That in Docket No. 35,154-C (C-1868) on February 18, 1949, the Commission promulgated an Interim Order, in which findings included *inter alia* that in the interest of [fol. 320] conversation the fair and reasonable minimum price of natural gas at the wellhead in the Hugoton Field should be eight cents (8¢) per M.c.f., and that all takers of gas from said field would attribute thereto for purposes of payments to producers, landowners, lease owners and royalty owners, the fair and reasonable minimum price of eight cents (8¢) per M.c.f. at the wellhead until further order of the Commission in the investigation instituted by it in Docket No. C-164.

6. That subsequent to the Interim Order dated February 18, 1949, Kansas-Nebraska Natural Gas Company and Northern Natural Gas Company filed applications for judicial reviews thereof in the District Court of Finney County, Kansas, under the provisions of the Laws of 1945, Chapter 233, Section 9; that likewise, under the same authority, Panhandle Eastern Pipe Line Company brought a similar action in the District Court of Seward County, Kansas; and that Cities Service Gas Company filed a complaint against the Commission in the United States District Court for the District of Kansas, which subsequently was dismissed by that company. The three cases in the state courts were consolidated for hearing before the District Court of Finney County sitting both in the

capacity of Judge of Finney County District Court and Judge pro tem of Seward County District Court. From adverse decisions in the district courts, all three takers of gas (Kansas-Nebraska, Northern and Panhandle) took appeals to the Supreme Court of Kansas, which upheld the district courts and sustained the Commission's authority to establish the minimum wellhead price of eight cents [fol. 321] (8¢) per M.c.f., (*Kansas-Nebraska Natural Gas Co.* v. *State Corporation Commission*, 169 Kan. 722). The three appellants subsequently filed motions for rehearing which were denied by the Supreme Court, (*Kansas-Nebraska Natural Gas Co.* v. *State Corporation Com.*, 170 Kan. 341). Following the two Supreme Court decisions just referred to, the Commission, in the original docket by appropriate order dated February 21, 1951, promulgated an implementing order to its Interim Order and later entered an Order Nunc Pro Tunc on March 8, 1951, in said docket, to correct an error in its order of February 21, 1951. The Commission, at the time it entered its Interim Order of February 19, 1949, wrote a Memorandum Opinion under date of February 23, 1949, which related some of the history of the field, the powers of the Commission and generally the Commission's jurisdiction over the conservation of this irreplaceable natural resource and the production of gas in the Hugoton Field of Kansas. It would be unnecessarily repetitious to set out here the contents of that Memorandum Opinion.

7. That the proceeding in this docket is not a rate matter.

8. The Commission as of this date has entered in this docket a Memorandum Opinion which should be incorporated herein and made a part of this order by reference.

9. That because of the voluminous record and the widespread interest in the subject matter, not only in the interest of conservation and protection of correlative rights but also because of the possible effect the decision herein may have on certain classes of rates to consumers, we [fol. 322] have felt impelled to re-examine the question of a reasonable minimum wellhead price structure in the

Kansas Hugoton Gas Field which is now furnishing gas to more than one-fourth of the states of the Union.

10. It is not disclosed by the record before us that the eight-cent (8¢) price adopted by the Commission through its Interim Order of February 18, 1949, and now in effect, has had any adverse effect upon marketing or marketing conditions in the field or that it has adversely affected ultimate domestic consumer rates. Promulgation of a minimum price is a paramount factor in conservation and the protection of correlative rights. Having a low value in the stages of production, gas can be used uneconomically and wastefully because of the low commercial price being paid at the wellhead. That an important source of gas for the economy of not only Kansas but many other states is the Kansas portion of the Hugoton Gas Field; that gas is not now competitive with other fuels, namely, oil and coal; that the cheapness of gas is conducive to waste as prohibited by statute.

11. That conditions exist which, coupled with known differentials in transportation costs, adversely affect correlative rights.

12. Public records of this Commission clearly indicate that since February, 1948, the number of wells in the field has more than tripled, and that ultimate development of the field is rapidly approaching. All of this leads to the inevitable conclusion that withdrawals from the field are nearing their peak, and also carries the warning that practices of conservation must be heightened if the public is to enjoy the fullest recovery of gas from the Hugoton Field.

[fol. 323] 13. A true stimulant to conservation is price, and a low price is conducive to waste which is specifically prohibited by G. S. 1949, 55-701. Experience in the Hugoton Field since 1949, the year of the first minimum wellhead order, has shown that a floor price in the interest of conservation supports the concept of conservation by economic uses and the avoidance of waste. It is apparent this can be best accomplished through a realistic minimum field price for this precious fuel.

14. Since price is a prime factor in avoiding various types of waste, strengthening that factor strengthens conservation in the Hugoton Field.

15. The minimum price of eight cents (8¢) per M.c.f. at the wellhead adopted by the Interim Order of February 18, 1949, is not now an effective conservation measure for the various reasons amplified in the Memorandum Opinion.

16. That a fair and reasonable minimum wellhead price to be attributed to all gas taken from the field, except gas used for lease operations, is in the public interest and welfare, encourages conservation, furthers the avoidance of discrimination and helps to promote orderly development and exploration.

17. That currently a fair and reasonable minimum price for gas at the wellhead in the Hugoton Field is eleven cents (11¢) per M. c.f. (14.65 pounds p.s.i.a.).

[fol. 324] 18. That all persons, firms or corporations which take gas or cause gas to be taken from the Kansas Hugoton Gas Field on and after January 1, 1954, 12:01 a.m., should be required, as a condition precedent for withdrawal from the common source of supply, to pay or attribute to all gas taken, except gas for the operations of leases, for all purposes including payments to producers, landowners, lease owners and royalty owners, the fair and reasonable minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.) at the wellhead.

19. That the petition herein should not be granted on either basis requested.

It Is, Therefore, by the Commission Ordered: That the Memorandum Opinion entered herein this date be, and the same is, hereby incorporated and made a part of this order by reference.

It Is Further by the Commission Ordered: That the petition herein be, and the same is, hereby denied.

It Is Further by the Commission Ordered: That all persons, firms or corporations which take gas or cause

gas to be taken from the Hugoton Gas Field in Kansas on and after January 1, 1954, 12:01 a.m., shall, as a condition precedent for withdrawal from the common source of supply, pay or attribute to all gas taken, except gas for the operations of leases, for all purposes including payments to producers, landowners, lease owners and royalty owners, the fair and reasonable minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.) at the wellhead until further order or orders of this Commission. [fol. 325] The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders, and promulgating and implementing such further rules and regulations as from time to time it may deem proper.

By the Commission It Is So Ordered.

Raymond B. Harvey
Raymond B. Harvey, Secretary

(Seal)

[fol. 326]

Exhibit C to Complaints

"55-708. Penalties for violations. That in addition to any penalty that may be imposed by the state corporation commission, any person, firm or corporation, or any officer, agent or employee thereof, violating the provisions of this act, or valid order, rules or regulations of the commission shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in any sum not exceeding $500, or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment. (L. 1935, ch. 213, § 8; July 1.)

"55-709. Injunction and other remedies. That the state corporation commission shall have the right to maintain an action in any court of competent jurisdiction in this state to enforce by injunction, mandatory injunction, and any other appropriate or legal or equitable remedy any valid rule, order, or regulation made by the state corpora-

tion commission or promulgated under the provisions of this act, and said court shall have the authority to make and render such judgments, orders and decrees as may be proper to enforce any such rules, orders, and regulations made and promulgated by the state corporation commission. (L. 1935, ch. 213, § 9; July 1.)

"55-710. Receivership upon violation of act. That in addition to any penalty imposed under the provisions of this act and to the remedy and relief heretofore set forth, any person, firm or corporation violating the provisions of this act, valid order, rules or regulations of the commissions shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the state of Kansas through the attorney general, but such receivership shall only extend to the operating of producing wells and the marketing of natural gas under the provisions of this act. (L. 1935, ch. 213, § 10; July 1.)"

[fol. 327] [File endorsement omitted]

[fol. 328]

EXHIBIT A TO MOTION OF DEFENDANT FOR STAY OF ACTION

IN THE DISTRICT COURT OF SEWARD COUNTY, KANSAS

No. 7219

PAN AMERICAN PETROLEUM CORPORATION, a corporation,
Plaintiff,

v.

CITIES SERVICE GAS COMPANY, a corporation, Defendant.

PETITION

COMES NOW plaintiff and for cause of action against defendant states and alleges:

1. That plaintiff, Pan American Petroleum Corporation, formerly Stanolind Oil and Gas Company, is a corporation duly chartered, organized and existing under and by virtue of the laws of the State of Delaware, and is duly authorized to do business in the State of Kansas.

2. That defendant, Cities Service Gas Company, is a corporation duly chartered, organized and existing under and by virtue of the laws of the State of Delaware, and is duly authorized to do business in the State of Kansas.

3. That on June 23, 1950 plaintiff and defendant entered into a gas purchase contract by the terms of which plaintiff agreed to sell and defendant to buy dry gas produced from oil and gas leases owned by plaintiff covering many thousands of acres of land in the Kansas-Hugoton Gas Field, a true and correct copy of which contract is hereto attached, marked Exhibit "A" and made a part hereof.

4. That under the original terms of said contract, as will more fully appear by reference thereto, the initial wellhead price for said gas was 8.4¢ per thousand cubic feet measured at 16.4 pounds per square inch absolute at a temperature of 60 degrees Fahrenheit; that pursuant to said contract, plaintiff commenced the delivery and sale of gas to defendant and plaintiff is now selling and at all times herein mentioned has continued to sell and deliver gas thereunder to defendant.

[fol. 329] 5. That the State Corporation Commission of the State of Kansas issued an order in its Docket No. 44,709-C (C-3216) on December 2, 1953, effective January 1, 1954, prescribing a minimum wellhead price of 11¢ per Mcf measured at 14.65 psia at 60 degrees Fahrenheit; that such Order, from and after its effective date of January 1, 1954, became a part of said June 23, 1950 contract; and that defendant paid plaintiff for all gas delivered under said Exhibit "A", on and after January 1, 1954, at the modified contract price of 11¢ per Mcf measured at 14.65 psia at 60 degrees Fahrenheit.

6. That defendant is and has been, since the enactment thereof in 1938, a natural gas company within the purview

of the Natural Gas Act, 15 U.S.C.A. 117 et seq, and, as such, is and has been at all times involved herein fully familiar and acquainted with the provisions of said Act and the rules, regulations and orders issued thereunder by the Federal Power Commission, the agency designated to administer the provisions of the said Act.

7. That on July 16, 1954 the Federal Power Commission issued an order, designated as Order No. 174, 18 C.F.R. 54, et seq. providing in part as follows:

"The rules and regulations heretofore adopted by the Commission pursuant to Sections 4 and 7 of the Act have been directed principally to interstate pipeline companies. Those producers and gatherers which come within the class found by the United States Supreme Court in the *Phillips* case [*Phillips Petroleum Company* v. *Wisconsin, et al*, 347 U.S. 672.] to be subject to the Commission's jurisdiction should be afforded a reasonable opportunity to comply with the requirements of the Act to the end that the regulatory objectives of Congress may be achieved within the shortest feasible time. Also, ... a reasonable cut-off date should be fixed in order to avoid confusion in attempting to readjust past transactions. Therefore, we have determined to provide in the first instance, and subject to our further order, reasonably simple rules and regulations . . . and for making such rules and regulations applicable to transactions and operations conducted on and after June 7, 1954, the date of the Supreme Court decision in the *Phillips Petroleum Company* case. . . ."

8. That a producer and gatherer of gas coming within the class found by the United States Supreme Court in the *Phillips* case to be subject to the jurisdiction of the Federal Power Commission was referred to and defined in Order No. 174 as an "Independent Producer" and said Order required all such producers to file with the Commission "rate schedules", as defined in the Order, setting forth the terms and conditions of each of their field sales of gas as of June [fol. 330] 7, 1954; and further, the Order required all independent producers to file with the Commission applica-

tions for Certificates of Public Convenience and Necessity as required by the Act.

9. That plaintiff is an independent producer as defined in Order No. 174 to the extent that the gas sold by plaintiff to defendant under said Exhibit "A" is transported by defendant across a state line.

10. That on November 16, 1954, plaintiff, as such an independent producer and in compliance with Order No. 174, filed with the Federal Power Commission (a) an application for a Certificate of Public Convenience and Necessity covering its sale to defendant under said June 23, 1950 contract, and (b) as plaintiff's rate schedule for gas sold under the said contract, the contract itself, and the Order of the State Corporation Commission of the State of Kansas modifying the contract price from 8.4¢ per Mcf measured at 16.4 pounds psia at 60 degrees Fahrenheit to 11¢ per Mcf measured at 14.65 psia at 60 degrees Fahrenheit, together with, as required by said Order No. 174, a letter of transmittal and sample billing, both of which stated that the sales price for gas delivered by plaintiff to defendant on and after June 7, 1954 was and would remain 11¢ per Mcf measured at 14.65 psia at 60 degrees Fahrenheit until and unless changed in accordance with the provisions of the Natural Gas Act and the rules and regulations issued thereunder; that a copy of the letter transmitting such rate filing to the Federal Power Commission was mailed and delivered to defendant on November 16, 1954; and that plaintiff complied with all terms of the Natural Gas Act and all of the rules and regulations of the Federal Power Commission in the filing of said application and rate schedule.

11. That defendant, despite its knowledge of plaintiff's said filing of 11¢ per Mcf measured at 14.65 psia as the modified contract price effective on and after June 7, 1954, and despite its knowledge of the Natural Gas Act and of the regulations prescribed thereunder, did not protest said rate filing, as authorized by Section 1.10 of the Rules of Practice and Procedure before the Federal Power Commission, 18 C.F.R. 11; that defendant, pursuant to such

Rules of Practice and Procedure, did object to and protest against an identical rate filing of another independent producer.

[fol. 331] 12. That on March 2, 1955 the Federal Power Commission issued an Order accepting plaintiff's said rate filing of 11¢ per Mcf at 14.65 psia as properly filed under Order No. 174 and as the rate properly applicable to all gas delivered by plaintiff to defendant under said Exhibit "A" from and after the June 7, 1954 cut-off date established by said Order No. 174; that the March 2, 1955 Federal Power Commission Order further recognized that the said rate of 11¢ per Mcf at 14.65 psia would continue to remain applicable to gas delivered under Exhibit "A" until and unless changed as provided by the Natural Gas Act and the rules and regulations issued thereunder; that defendant, with full knowledge of the existence of said Order, took no action whatever and specifically failed, neglected and refused to apply for a rehearing on said Order as provided in Section 19 (a) of the Natural Gas Act with which defendant was fully familiar; and that, to the contrary, defendant then voluntarily paid and continued voluntarily to pay plaintiff the said filed rate of 11¢ per Mcf at 14.65 psia for all gas delivered by plaintiff to defendant under said Exhibit "A" from and after the June 7, 1954 cut-off date established by Order No. 174.

13. That on March 22, 1954 defendant filed with the Federal Power Commission a notice advising the Commission and the Public that it was, 30 days thereafter, increasing all of its gas rates substantially; that within said 30-day period the Federal Power Commission suspended said proposed increases for a period of five months in accordance with the Natural Gas Act, and instituted in its Docket No. G-2410 a proceeding to determine the reasonableness of said increased rates; that, after the expiration of said suspension period, defendant commenced to collect and did collect said increased rates; that in support of said increased rates defendant relied upon said price of 11¢ per Mcf at 14.65 psia as being the modified contract price applicable under Exhibit "A", and in a hearing held in said proceeding, on or about January 31, 1955, admitted that

the contract price under Exhibit "A" had been increased and that the contract had been amended to a price of 11¢ per Mcf at 14.65 psia; and that defendant had agreed with plaintiff to pay said price under said contract.

14. That Cities Service Oil Company, an affiliate of defendant, and defendant itself, by and through its wholly [fol. 332] owned subsidiary, Cities Service Gas Producing Company, both of which are and were at all times involved herein, independent producers of gas, subject to the Natural Gas Act, and to the rules and regulations prescribed thereunder, filed late in 1954 the Oklahoma minimum price of 9.8262¢ per Mcf at 14.65 psia, and the said Kansas minimum price of 11¢ per Mcf at 14.65 psia, as the respective cases may be, with the Federal Power Commission, as the respective prices, effective on and after June 7, 1954 under at least 15 separate and distinct gas sales contracts in which they appeared as seller; that said filings were made with the full knowledge, consent and approval of defendant; that said filings were accepted by the Federal Power Commission, the same as plaintiff's said filing; and that said subsidiary and affiliate were paid by the purchasers under said contracts said prices so filed as the effective contract prices.

15. That on July 1, 1957 plaintiff filed with the Federal Power Commission a notice that, effective that date, the price applicable under Exhibit "A" would increase from 11¢ to 11.0715¢ per Mcf at 14.65 psia, in conformity with the tax reimbursement clause thereof on account of G. S. 1957 Supp. 79-4201; that on June 28, 1957 plaintiff notified defendant of the contemplated filing of said change in rate, as required by subsection (f) of section 154.94, 18 C.F.R. 57, of the regulations prescribed under the Natural Gas Act; that, having full knowledge of said filing of a modified contract price of 11.0715¢ per Mcf at 14.65 psia, defendant again failed and neglected to file with the Federal Power Commission a protest or objection against said filing within the time allowed therefor by the Natural Gas Act, and the rules and regulations prescribed thereunder, and that, as a consequence of defendant's said failure, the Federal Power Commission, by Order dated August 19, 1957, accepted said rate filing and made said price of 11.0715¢ per

Mcf at 14.65 psia effective as of July 1, 1957, all of which was and is well known to defendant.

16. That for all gas delivered under Exhibit "A" from July 1, 1957 to and including November 23, 1957, defendant voluntarily paid plaintiff 11.0715¢ per Mcf at 14.65 psia as the modified contract price; that defendant actively urged other independent producers, who had failed to file with the Federal Power Commission by July 1, 1957, to file notices of increases in the prices applicable under their respective contracts with defendant on account of the tax reimburse-
[fol. 333] ment clauses thereof, because, as defendant stated to them, all prior tax reimbursement filings by other producers, including plaintiff, had been permitted to become effective by the Federal Power Commission; that, prompted by defendant's urging, said independent producers thereupon filed for said tax reimbursement price increases, which said filings were duly permitted to become effective by said Commission, and defendant thereupon paid such producers the increased contract prices resulting from their tax reimbursement filings; that plaintiff paid the State of Kansas, on the basis of 1¢ per Mcf at 14.65 psia, said oil and gas severance tax pursuant to the terms of G. S. 1957 Supp. 79-4201, et seq., until said oil and gas severance tax was declared unconstitutional by the Supreme Court of the State of Kansas in December, 1957; that defendant has demanded from plaintiff payment of that portion of the severance tax so paid the State of Kansas for which defendant reimbursed plaintiff as aforesaid; that said tax reimbursement clause in Exhibit "A" entitles plaintiff only to be reimbursed thereunder for taxes actually paid by plaintiff; and that, because plaintiff is not now paying said tax, plaintiff does not contend that it is entitled thereto under said contract.

17. That payments of 1¢ per Mcf at 14.65 psia, as hereinbefore alleged, were all voluntarily made by defendant to plaintiff to and including November 23, 1957 (Defendant voluntarily paid 11.0715¢ per Mcf at 14.65 psia during the period of time mentioned in paragraph 16 hereof.), but for all gas produced from and after November 24, 1957 defendant has tendered to plaintiff payment at the rate of 8.4¢

per Mcf at 16.4 psia at 60 degrees temperature; that on January 29, 1958 defendant demanded payment from plaintiff for the difference between the payments defendant had made for gas delivered to it under said contract during the period commencing January 1, 1954 and terminating November 23, 1957, both inclusive, and the payments which it would have made for such gas had it paid at the rate of 8.4¢ per Mcf at 16.4 psia, including interest thereon at six percent per annum from the respective dates of such payments, which demand has been refused by plaintiff.

18. That under Exhibit "A" all gas produced from the leases therein described was dedicated to be delivered and sold to defendant under said Exhibit "A"; that plaintiff assigned, subject to the terms of said Exhibit "A", a number [fol. 334] of said leases to third parties, there being some 125 persons owning working interests in said assigned leases, and who reside in several states other than Kansas; that said assignees drilled gas wells on the assigned acreage which wells were attached to defendant's gathering system; that plaintiff owns no interest in said leases so assigned, save and except only small overriding royalty interests or small retained working interests; that, defendant was notified of the acreage assigned and the names of each assignee as and when each lease was so assigned by plaintiff; that as an accommodation to defendant, and as provided in Exhibit "A", the proceeds of the sale of the gas by assignees from such farmed-out acreage was paid by defendant to plaintiff, and plaintiff in turn forthwith paid the proceeds so received to the owners thereof, all of which was well known to defendant; that defendant paid for said gas 11¢ per Mcf at 14.65 psia, the same as it paid plaintiff for gas from plaintiff's own leases as hereinabove alleged; that despite the fact defendant knew plaintiff was only a collection agent for said money, defendant has demanded payment from plaintiff of the monies belonging to and paid said farm-out lease owners; that defendant is threatening suit against plaintiff for the difference in price between 8.4¢ per Mcf at 16.4 psia and 11¢ per Mcf at 14.65 psia including the sums transmitted to said farm-out lessees, which suit may be filed in a state other than Kansas, in which state

the court would have no jurisdiction of such farm-out lease owners.

19. That plaintiff at all times herein mentioned has performed and is now performing each and all of its obligations to sell and deliver said gas to defendant under Exhibit "A"; that plaintiff has not refused to deliver or threatened to cease the delivery of gas to defendant under Exhibit "A", either before or after January 1, 1954, the effective date of said 11¢ order; that plaintiff was on and after June 7, 1954, prohibited by Section 7(b) of the Natural Gas Act from discontinuing deliveries of gas under Exhibit "A" without first obtaining the approval of the Federal Power Commission; and that no such approval has been requested or obtained by plaintiff.

20. That all of plaintiff's leases from which gas was sold under said Exhibit "A" provide a landowner's royalty of not less than 1/8 of the proceeds received from the sale of raw gas as such at the wellhead, and plaintiff at all times herein involved, except from and after November 24, 1957, [fol. 335] paid said lessors royalties on raw gas on the basis of 11¢ per Mcf at 14.65 psia, all of which was known to defendant.

21. That plaintiff, relying on said 11¢ price, expended great sums of money drilling new wells, on lands previously dedicated under Exhibit "A" to be attached to defendant's gathering system, and reworking wells previously connected to said gathering system in order to increase the production of gas therefrom, which new drilling and reworking operations would not have been undertaken by plaintiff except for said 11¢ price, all of which was well known to defendant.

22. That, under the law of the State of Kansas, defendant, by virtue of the foregoing facts, acts, agreements, omissions and conduct, has modified and consented to the modification of said contract to the extent of substituting 11¢ per Mcf at 14.65 psia as the price applicable thereunder to gas delivered prior to June 23, 1961, in lieu of 8.4¢ per Mcf at 16.4 psia; and that by reason thereof said contract was modified by defendant's acquiescence as so alleged and

defendant is estopped to contend that said contract was not so modified.

23. That by reason of the foregoing an actual controversy exists between plaintiff and defendant and unless an adjudication of the rights of the parties is made by the court at this time a multitude of suits will be filed, and disastrous results and extensive litigation will result to both plaintiff and defendant.

WHEREFORE, plaintiff prays the court to interpret said contract and adjudicate the rights of the parties under the foregoing facts, and render a declaratory judgment as to such rights and obligations, and also render such judgment for costs as may be equitable and just.

W. W. Heard
John F. Jones
George C. Spradling

ATTORNEYS FOR PLAINTIFF

Filed: June 4, 1958.

[fol. 336]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Civil Action No. 722—1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

PAN AMERICAN PETROLEUM CORPORATION, a corporation, Defendant.

MOTION BY PLAINTIFF FOR SUMMARY JUDGMENT AND AFFIDAVITS AND EXHIBITS IN SUPPORT THEREOF—Filed February 18, 1959

Plaintiff, Cities Service Gas Company, a corporation, respectfully moves the Court, pursuant to Rule 56 of the

Rules of the Superior Court (Civil) of the State of Delaware, to enter a summary judgment for plaintiff and against defendant, for the relief demanded by plaintiff in its complaint, upon the ground and for the reason that there is no genuine issue as to any material fact in this cause and that plaintiff is entitled to judgment, as a matter of law, as appears from the pleadings and admissions on file herein, and the affidavits and exhibits of plaintiff attached hereto and made a part hereof. In support of its motion for summary judgment the following affidavits and exhibits are attached hereto, incorporated herein, and made a part hereof:

Exhibit 1—A true and correct copy of the Petition filed by defendant in Cause No. 7219, styled Pan American Petroleum Corporation, a corporation, Plaintiff, v. Cities Service Gas Company, a corporation, Defendant, in the District Court of Seward County, Kansas, the same being Exhibit A to defendant's Motion for Stay of Action filed herein.

Exhibit 2—A true, correct and authenticated copy of the Order made and entered by the State Corporation Commission of the State of Kansas on December 2, 1953, in Docket No. 44,709-C.

Exhibit 3—A true and correct copy of Pan American Petroleum Corporation's F.P.C. Gas Rate Schedule No. 84 between such company and Cities Service Gas Company, duly certified to on December 5, 1958, by the Records Officer of the Federal Power Commission.

[fol. 337] Exhibit 4—A true and correct copy of an "Order Approving Proposed Settlement and Requiring Tariff Revisions to be Filed and Terminating Proceedings" issued by the Federal Power Commission on May 25, 1956, In the Matter of Cities Service Gas Company, Docket Nos. G-2410 and G-9468, on file with such Commission and duly certified by the Records Officer of such Commission on November 17, 1958.

Exhibit 5—A true and correct copy of a Notice dated February 19, 1954, given by Stanolind Oil and Gas Com-

pany to: All persons receiving gas settlements for Kansas-Hugoton production from or through Stanolind Oil and Gas Company, a copy of the same having been filed with the Federal Power Commission and the attached copy being duly certified to by the Secretary of such Commission on February ....., 1959.

Exhibit 6—A true and correct copy of a letter from Stanolind Oil and Gas Company to the Federal Power Commission dated November 15, 1954 and duly certified to by the Records Officer of such Commission on December 4, 1958.

Exhibit 6A—A true and correct copy of a letter of transmittal from Stanolind Oil and Gas Company to the Federal Power Commission dated November 15, 1954 and duly certified to by the Records Officer of such Commission on December 4, 1958.

Exhibit 7—A true and correct copy of a letter from the Federal Power Commission to Stanolind Oil and Gas Company dated March 2, 1955, duly certified to by the Records Officer of such Commission on December 4, 1958.

Exhibit 8—Affidavit of W. R. Morton relating to certain voucher checks issued by plaintiff to defendant during the period January 1, 1954 through November 22, 1957.

Exhibit 9—A true and correct copy of a voucher check issued by plaintiff to defendant, dated February 25, 1954, attached to and made a part of the affidavit of W. R. Morton.

Exhibit 10—The Affidavit of Russel W. Hofsess relating to correspondence between plaintiff and defendant and of defendant in plaintiff's files.

[fol. 338] Exhibit 11A—A true and correct copy of a letter dated January 21, 1954, from plaintiff to defendant relating to the Kansas Minimum Price Order, which letter is attached to and made a part of the Affidavit of Russel W. Hofsess.

Exhibit 11B—A true and correct copy of a letter dated January 27, 1954, from defendant to plaintiff relating to the Kansas Minimum Price Order, which letter is attached to and made a part of the Affidavit of Russel W. Hofsess.

Exhibit 12—A true and correct copy of a Gas Purchase Contract entered into on June 23, 1950, between plaintiff and defendant. Such contract is the same as Exhibit A to plaintiff's petition filed in the District Court of Seward County, Kansas.

Respectfully submitted,

John J. Morris, Jr., Howard L. Williams, Of Morris, James, Hitchens & Williams, Attorneys for Plaintiff, 701 Bank of Delaware Building, Wilmington, Delaware.

Conrad C. Mount, O. R. Stites, Gordon J. Quilter, Of Counsel, c/o Cities Service Gas Company, First National Building, Oklahoma City, Oklahoma.

Acknowledgment of service (omitted in printing).

[fol. 339]

EXHIBIT 3 TO MOTION BY PLAINTIFF FOR SUMMARY JUDGMENT

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

CERTIFICATION

I hereby certify that the attached two hundred and fourteen (214) pages are true copies of Pan American Petroleum Corporation's FPC Rate Schedule No. 84, filed November 16, 1954 on file with this Commission.

This 5th day of December, 1958.

/s/ CHARLES C. BENNINGTON
Name
Title Records Officer

(SEAL)

I hereby certify that

Name Charles C. Bennington

Title Records Officer

whose signature appears above, is official custodian of the records of the Federal Power Commission to which certification is made and was such official custodian at the time of executing the above certification.

/s/ J. H. Gutride
Secretary

[fol. 340]

RECEIVED
FEB 19 4 58 PM '57
FEDERAL POWER COMMISSION

Official File Copy

LAW OFFICES
DOW, LOHNES AND ALBERTSON
MUNSEY BUILDING
WASHINGTON 4, D. C.

TELEPHONE
STERLING 3-1000
CABLE "DOWLOHNES"

February 19, 1957

Honorable Joseph H. Gutride
Secretary
Federal Power Commission
Washington 25, D. C.

Re: Change in Name of Stanolind Oil and Gas Company to Pan American Petroleum Corporation

Dear Mr. Gutride:

On behalf of Pan American Petroleum Corporation (formerly Stanolind Oil and Gas Company), this letter is

written to you requesting a change in the designation of certain certificates, applications for certificates and rate filings heretofore made with your Commission.

As you are no doubt aware, on February 1, 1957, the name of "Stanolind Oil and Gas Company" was changed to "Pan American Petroleum Corporation" by appropriate corporate action taken pursuant to the laws of the State of Delaware in which State said company is incorporated. Both before and since the change in name, the fact of such change has been the subject of conversations between us and members of the Commission's Staff, and this letter is being written in accordance with suggestions received from the Staff in the matter.

It is to be understood that the only thing which occurred on February 1, 1957 was the change in name and that no other alteration or change was made in the company, its properties or its operations. It is particularly to be noted that this action was not inter-related with, nor is a part of a corporate action taken earlier by which a former corporation known as Pan American Production Company was merged into and with Stanolind Oil and Gas Company. The details of that transaction are properly before the Commission in its Docket No. G-11405, and they are in no way related to the request hereinafter contained.

[fol. 341] On behalf of Pan American Petroleum Corporation, it is respectfully requested that each and every Certificate of Public Convenience and Necessity which has heretofore been granted to Stanolind Oil and Gas Company be amended and re-designated to show that the grantee of said certificate is the Pan American Petroleum Corporation in lieu of Stanolind Oil and Gas Company as originally issued.

It is further requested that with respect to each and every of the several applications for Certificates of Public Convenience and Necessity which have heretofore been filed by Stanolind Oil and Gas Company, and which have not yet been acted upon by the Commission, be amended to change the name of the applicant from Stanolind Oil

and Gas Company to Pan American Petroleum Corporation.

It is further respectfully requested that with respect to each and every rate filing heretofore made by Stanolind Oil and Gas Company in its name as such, be re-designated as being the filing of Pan American Petroleum Corporation.

We believe that the foregoing, when accomplished, will properly and adequately take care of the entire matter, and that the records of the Commission will then completely and correctly reflect the true situation with respect to the several certificates, applications for certificates and rate filings above referred to.

Yours very truly,

/s/ Richard B M Entise

[fol. 342]

Statement of Redesignation of Rate Schedule

This rate schedule has been redesignated from Stanolind Oil and Gas Company FPC Gas Rate Schedule No. 84, and Supplement Nos. 1 through 79, thereto, to Pan American Petroleum Corporation FPC Gas Rate Schedule No. 84, and Supplement Nos. 1 through 79, thereto.

[fol. 343]

FPC Gas Rate
Schedule No. 84
Filing Date Nov 16 1954
Effective Date Accepted

(Illegible) File Copy
Stanolind Oil and Gas Company

18196

Received
Nov 16 5 07 AM '54
Federal Power Commission

Gas Purchase Contract

between

Stanolind Oil and Gas Company
(Seller)

and

Cities Service Gas Company
(Buyer)

Hugoton Field, Kansas

[fol. 344]

Received
Nov 16 5 07 AM '54
Federal Power Commission

18196

Gas Purchase Contract

This agreement, made and entered into as of the 23rd day of June, 1950, by and between Stanolind Oil and Gas Company, a Delaware corporation, hereinafter referred to as "Seller", and Cities Service Gas Company, a Delaware corporation, hereinafter referred to as "Buyer";

Witnesseth: That

Whereas, heretofore under date of June 13, 1946, Seller and Buyer entered into a Gas Purchase Contract providing

for the sale and purchase of natural gas produced or to be produced from certain lands in the Kansas-Hugoton Field, said lands being set out and designated as Area "A" on the plat attached hereto, marked Exhibit "A", and made a part hereof, which said Gas Purchase Contract was amended by letter agreements dated, respectively, June 13, 1946, December 9, 1946, July 31, 1947, June 18, 1948, and December 9, 1948, and by that certain Amendment to Gas Purchase Contract dated March 8, 1950; and

WHEREAS, Seller owns oil and gas leases covering approximately four hundred thousand (400,000) acres of land in the Kansas-Hugoton Field in addition to the lands covered by the said Contract of June 13, 1946, as amended, said additional lands being set out and designated as Areas "B" and "C" on the said plat marked Exhibit "A" which such Exhibit "A" shall be supplemented within six (6) months from the date hereof by a complete tabulation of Seller's interest in all of the lands and leases covered by said Exhibit "A"; and

WHEREAS, Buyer, in order to meet the demands of its expanding market, desires to obtain substantial quantities of gas in addition to the quantities of gas produced or to be produced by Seller from the lands covered by the said Contract of June 13, 1946, as amended, so that Buyer will have supplies of merchantable natural gas ample to meet, insofar as prudently possible at all times and over a long period of time, the demands of its customers at the various times [fol. 345] such demands occur in its widely distributed markets; and

WHEREAS, Seller desires to sell all of its merchantable natural gas produced or to be produced from gas wells only from producing zones at depths above sea level from said additional lands and is willing to sell all of such natural gas to Buyer upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants hereof and of the dedication by Seller of additional gas reserves to Buyer's requirements, it is hereby mutually

stipulated and agreed by and between the parties hereto as follows, to wit:

ARTICLE I

Supersedure

Upon execution of this agreement by both Seller and Buyer, the Gas Purchase Contract between the said parties dated June 13, 1946, as amended, above referred to, shall effective as of 7:00 o'clock a.m. Central Standard Time, June 23, 1950, be superseded by this agreement and shall be of no further force and effect from and after said time and date.

ARTICLE II

Definitions

As used in this agreement, the following terms, words, and phrases shall have the following meanings:

1. *Dedicated Reserves* shall mean Seller's gas rights in and to the gas producing zones at depths above sea level covered by lands and leases set out as Areas "A", "B", and "C" on the plat attached hereto and marked Exhibit "A".

2. *Natural Gas* or *Gas* shall mean gas produced from gas wells only from producing zones at depths above sea level, and does not include gas produced from zones from any other depth or gas produced from oil producing formations in conjunction with the production of oil.

3. *Deliverability* shall mean that quantum of measurement of the productive capacity of a well as defined by the rules, regulations, and order of the State Corporation Commission of Kansas as now determined or hereafter [fol. 346] fixed, and in the event and whenever such deliverability shall cease to or not be defined by the State Corporation Commission of Kansas or some other State or Federal regulatory body having lawful jurisdiction and authority, then by such reasonable determination as the parties may agree upon, or, failing therein, a fair standard for the determination of the ability of the various wells in

the Kansas-Hugoton Field to produce gas against a reasonable percentage of the average seventy-two (72) hour shut-in pressure of all the wells in the Kansas portion of said Field.

4. A *Commercial Well* shall mean any well having an initial deliverability of at least 100 MCF of gas per day having an average gross heating value of not less than 700 BTU's per cubic foot.

5. The term "average gross heating value" shall mean the number of BTU's produced by combustion at constant pressure of the amount of gas saturated with water vapor which would occupy a volume of one cubic foot at a temperature of sixty degrees Fahrenheit (60° F.) and under a pressure equivalent to that of thirty (30) inches of mercury at thirty-two degrees Fahrenheit (32° F.) and under the standard gravitational force (the acceleration 980.665 c.m. per sec. per sec.), with air of the same temperature and pressure as the gas when products of combustion are cooled to the initial temperature of gas and air and when the water formed by combustion is condensed to the liquid state.

6. *Fiscal Accounting Month* shall mean that period of time extending from the 23rd day of each calendar month to the 22nd day, inclusive, of the next succeeding calendar month.

ARTICLE III

Seller's Reservations

Seller hereby expressly reserves and excepts from the terms of this agreement such quantities of gas produced from the acreage described on Exhibit "A" as may at all times and from time to time be required by Seller in its sole opinion and discretion as a prudent operator for the following purposes:

1. Fuel when required to drill oil or gas wells on such acreage or on Seller's adjacent acreage and for all other operation requirements incident thereto;

[fol. 347] 2. Fuel when required for use in internal combustion engines employed in lifting oil to the surface of the ground from any oil well hereafter drilled on such acreage;

3. Fuel for stoves and inside lights in the principal dwelling located on the leaseholds covering such acreage, to the extent required by the present oil and gas leases on such acreage and to supply gas required under right-of-way and similar agreements.

4. Fuel for irrigation purposes to the extent reasonably required by Seller in the operation of its oil and gas properties.

Seller hereby expressly reserves and excepts from the terms of this agreement all of the liquid and liquefiable hydrocarbons contained in the gas produced from said Areas "A" and "B" specified on Exhibit "A" and removed from said gas by Seller under the same terms and conditions as set out in that certain Processing Agreement between the parties hereto dated June 23, 1950, in its Stano gasoline plant located in Section 5, Township 29 South, Range 38 West, Grant County, Kansas, as the same may exist from time to time.

The obligations of Seller hereunder are subject to the ability of Seller's wells to produce without waste and in accordance with prudent gas field practice. The control and operation of Seller's land and leaseholds producing gas sold to Buyer hereunder shall be and remain the exclusive right of Seller.

ARTICLE IV

Dedication

1. Subject to Seller's reservations and subject to the right of substitution, withdrawal, surrender, and disposal of acreage and gas rights under the terms and limitations of this agreement, Seller hereby dedicates to the fulfillment and performance of this agreement all of the dedicated reserves, together with all commercial gas wells drilled thereon as herein contemplated, and Seller agrees and covenants to maintain, at its own cost and expense, the dedicated reserves and substitutions therefor in full force and effect until such dedicated reserves are either per-
[fol. 348] petuated by production of gas wells drilled on

such acreage or released from dedication as herein provided, or until such lands and leases or portions thereof are proven unproductive of gas in commercial quantities, or until such leases or portions thereof have been tendered to Buyer as herein provided.

2. Seller shall have the right from time to time during the term of this agreement to substitute acreage of equal value and extent for a like amount of acreage described and included in Exhibit "A" (or acreage substituted therefor) upon the following conditions:

(a) Seller shall first obtain the written approval of Buyer to such substitution, and Buyer agrees that it will not capriciously or unreasonably withhold its approval, except that Seller shall have the right without the consent of Buyer to exchange or trade acreage dedicated hereunder with any acreage in the Kansas-Hugoton Field dedicated to the same market to which Buyer is selling gas. Seller immediately shall notify Buyer of any such exchange or trade.

(b) Any acreage so substituted shall upon substitution immediately be dedicated in the same manner and to the same extent theretofore attaching to the acreage described in Exhibit "A" (or acreage substituted therefor) for which other substitution is made.

(c) Seller shall prepare and forward to Buyer for execution a written release in recordable form, which Buyer will execute and acknowledge, which by its terms shall release from the dedication the acreage specified in Exhibit "A" (or acreage substituted therefor) for which other acreage has been substituted.

(d) Seller shall have the right, without the consent of Buyer, to rearrange and adjust acreage comprising its existing and future production units in order to comply with existing and future orders of the State Corporation Commission of Kansas, including the right to exchange acreage for such purposes, and in such event Seller shall immediately notify Buyer of such action.

[fol. 349] 3. Seller agrees that it shall endeavor in good faith to keep and maintain all of its leases on said lands covered by Exhibit "A" in full force and effect. If at any time Seller deems any of its leases or any part thereof to be condemned and no longer of any value or undesirable for it to keep or develop, it shall tender to Buyer, at least sixty (60) days prior to the expiration date of any such lease, an assignment of such lease or leases or portions thereof which Seller wishes to surrender. If Buyer fails to accept such assignment within thirty (30) days after the date of tender thereof, then Seller may at its option release and surrender or otherwise dispose of such lease or portions thereof. If Buyer accepts such assignment of any lease or portion thereof upon which there is a gas well, Buyer shall pay to Seller the reasonable salvage value of the well and the casing and equipment therein and thereon and used in connection therewith.

ARTICLE V

Sale and Purchase

1. Subject to and in accordance with the terms of this agreement, Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and receive all gas produced from the dedicated reserves and acreage substituted therefor as hereinabove provided. It is understood that said Exhibit "A" indicates lands and leases in which Seller owns either the entire gas rights or only a partial interest therein, and in this connection it is agreed by Seller and Buyer that Seller is only selling and Buyer is only purchasing the gas produced from such acreage which is attributable to Seller's interest therein, whatever that interest may be. Seller shall deliver gas hereunder to Buyer in such volumes and at such times as requested by Buyer up to the delivery capacity of the wells of Seller located on the acreage specified in Exhibit "A", provided, however, that Seller shall not be required to operate its wells in a manner not conforming to usual good practice in the industry.

2. Subject to the ability of Seller's wells to produce without waste in accordance with good gas field practice and to

the requirements relating to quality as set forth in Article XI hereof, Buyer agrees that, with respect to and within [fol. 350] the limits of its markets to which Buyer shall deliver gas purchased hereunder and subject to paragraph 3 of this Article V it shall, insofar as possible, purchase and take from each well covered hereby natural gas ratably with its takes of natural gas from all other wells in the Kansas-Hugoton Field for such markets or, if it is not possible so to do, then in any event Buyer shall purchase and take from the acreage covered hereby an aggregate quantity of natural gas ratably with its takes of natural gas from all other acreage in the Kansas-Hugoton Field for such markets. It is recognized and agreed that in taking natural gas ratably Buyer will be unable, due to varying operating conditions, to withdraw natural gas in exact ratable proportions during any specific month, but Buyer agrees that to the best of its ability it will maintain said ratable purchases hereunder by balancing excesses against deficiencies during each twelve (12) months period ending January 22. If during the year preceding any January 22 Buyer has taken less or more than Seller's ratable share of Buyer's market, and within twelve (12) months thereafter has been unable to bring such ratable takes in balance, then Buyer shall pay Seller for deficiencies in takes within thirty (30) days thereafter. "Ratably" or "Ratable" as used herein means in proportion to well allowables lawfully fixed and determined by the State Corporation Commission of Kansas, and if well allowables shall cease to be fixed and determined by said Commission or other regulatory body having jurisdiction thereover, then in proportion to the deliverability of the wells and the acreage attributable thereto from which Buyer shall be producing or purchasing gas in the Kansas-Hugoton Field for the same market.

3. Buyer shall construct and shall at all times maintain a gathering system, complete with pipe lines and compression equipment, in conformity with general practice of other gatherers in the Hugoton Field, however, in the event and whenever the quantities of gas which Buyer is obligated to take from Seller under Section 2 hereof shall not be sufficient with respect to any lease or acreage covered here-

by to (1) prevent drainage of the same by wells of others or (2) prevent loss of such lease by Seller, then within thirty (30) days after written notice by Seller to Buyer of either of such facts, Buyer shall commence taking gas from the [fol. 351] well or wells located on such lease acreage in sufficient quantities to prevent such drainage or loss of such lease if such well or wells are able to deliver such quantities of gas into Buyer's facilities, or, if such well or wells are only able to deliver at pressures appreciably less than offset wells and therefore are not so able to deliver into Buyer's facilities, Buyer shall so long as such condition exists take such measures as may be necessary to prevent loss or forfeiture of such lease by Seller. Nothing in this paragraph 3 shall operate to increase Buyer's obligation to take an aggregate quantity as provided in paragraph 2 of this Article V.

4. So far as practicable, Seller shall deliver to Buyer and Buyer shall take gas hereunder continuously, having due regard for the seasonal variation in the receipts of all gas by Buyer for the same market. Buyer agrees to notify Seller of any substantial increase in its daily requirements, and Seller agrees to notify promptly the designated agent for Buyer, or such other agent as may be agreed upon between the parties, of any interruptions affecting the delivery of gas hereunder, and also in order to meet current fluctuations in the requirements of Buyer, Seller shall begin, increase, decrease, or suspend the delivery of gas hereunder on the telephonic orders of such designated agent or such other agent.

ARTICLE VI

Development and Connection

1. At the date of this agreement the acreage specified as Areas "A", "B", and "C" has not been fully developed for the production of gas. It is recognized by the parties hereto that Buyer's markets must be further developed and expanded in order to enable Buyer to absorb the additional quantities of gas purchased by it hereunder and that Seller

must drill and complete additional wells on the acreage dedicated hereunder in order to supply such gas to Buyer. In this connection it is agreed by the parties hereto that, to the best of their abilities and to the greatest extent practicable in accordance with prudent operations, the rate of development of such acreage shall be commensurate with the rate of development and expansion of Buyer's market. [fol. 352] To this end Seller and Buyer agree to use due diligence in complying with the respective obligations imposed upon them by the provisions of this Article VI, but it is agreed that if either party is unable to comply with its said obligations because of inability due to force majeure to obtain pipe or other material and equipment necessary for its compliance with any such obligation within the performance period applicable thereto, then such period shall be extended until the necessary pipe or other material and equipment can be obtained and the required construction of facilities or drilling can be completed. Nothing in this paragraph shall be construed as in any way limiting or restricting the scope or applicability of Article XVI (Force Majeure) of this agreement.

On and after the date of this agreement, Buyer shall connect to all commercial wells drilled by Seller in said Area "A" as provided in paragraph 2(a) of this Article VI.

From the date of this agreement until January 1, 1956, for said Areas "B" and "C" it is anticipated that the gathering system expenditure schedule as set out in the table below is adequate to meet the estimated development schedule also set out in the table below in order to permit connection by Buyer to the wells so drilled as selected by Seller; however, if the expenditure schedule is inadequate to connect all wells so scheduled, then Seller shall either curtail the development rate or shall designate the order in which such wells shall be connected, and Buyer shall be obligated to connect wells as designated up to but not exceeding the cumulative expenditures by the end of any year set out in the table below.

Year	Estimated Number of Wells Drilled, to be Drilled or Caused to be Drilled by Seller		Cumulative Maximum Direct Expenditure for Gathering System and Well Connections by Buyer by the End of Each Year	
	Area B	Area C	Area B	Area C
1950				
1951	115	37	$3,291,000	$2,044,000
1952	44	48	3,636,000	2,625,000
1953	74	69	4,366,000	3,952,000
1954	34	51	4,676,000	4,466,000
1955	8	20	4,774,000	4,672,000
TOTAL	275	225		

[fol. 353] From and after January 1, 1956, Buyer shall connect to all commercial wells drilled by Seller in said Areas "B" and "C".

2. Buyer, subject to the provisions of Section 1 of this Article VI, and Section 3 of Article V, shall connect all commercial wells completed by Seller on the acreage covered hereby to its gathering system and thereafter purchase and pay for the gas produced therefrom under the terms of this agreement so long as such well is capable of producing against at least 50 psig flowing pressure. The time for such connection to be made by Buyer for each well in each of said areas shall be as follows:

(a) *Area "A"*: Within sixty (60) days after the receipt by Buyer of notice by Seller that a commercial well has been completed thereon;

one hundred twenty (120) S.B.I.
(b) *Areas "B" and "C"*: Within ~~sixty (60)~~ days after J.E.R.
receipt by Buyer of notice by Seller that a commercial well has been completed thereon or on June 1, 1951, whichever is the later date; provided, however, if at any time prior to June 1, 1951, Seller has a well on a lease which is in danger of forfeiture for lack of market, then Buyer shall within thirty (30) days after receipt of notice from Seller of such fact (i) begin or cause the purchase and receipt of gas from such well, or (ii) take such measures as may be necessary to pre-

vent loss or forfeiture of such lease, or (iii) release such well and lease from the terms of this agreement.

If Buyer fails to receive and purchase the gas tendered from any well on the dates required hereunder, Buyer shall nevertheless pay for the quantity of gas which could have been produced and sold to Buyer hereunder if Buyer had commenced taking the gas within the time herein provided. Such payments shall continue until actual deliveries are commenced, and payments made for gas not actually taken shall be considered as damages for Buyer's failure to comply herewith, and Buyer shall not have the right to later receive free of cost any gas to replace the gas so paid for but not taken.

3. If and whenever during the term of this agreement the operation of any well covered hereby shall become unprofitable to Seller, in its sole opinion, Seller shall have [fol. 354] the right to tender an assignment of such well and the acreage allocated thereto to Buyer and if Buyer does not accept such assignment within sixty (60) days after such tender, then Seller shall have the right to abandon such well and thereby release it from the terms of this agreement.

4. It is recognized by the parties hereto that Seller is presently selling gas to other purchasers on the acreage dedicated hereunder from the following gas wells:

Well Designation	Located In	Purchaser	Earliest Contract Termination Date	Notice Required to Terminate
Waechter "H"	6-26-37	Colo. Inter.	3-1-51	6 mos.
Waechter "F"	7-26-37	" "	30 days	30 days
Willets "B"	15-26-38	" "	*10-16-52	One Day
Beymer "B"	7-25-36	" "	4-1-51	6 mos.
Dan	2-25-37	" "	*10-16-52	One Day
Campbell "D"	3-25-37	" "	*10-16-52	One Day
Shell	4-25-37	" "	*10-16-52	One Day
Beymer "A"	12-25-37	" "	4-1-51	6 mos.
Strawn	14-25-37	" "	1-1-51	6 mos.
Tate-Hutton	28-25-37	" "	3-1-51	6 mos.

Well Designation	Located In	Purchaser	Earliest Contract Termination Date	Notice Required to Terminate
J. D. Hillman	27-24-37	" "	90 days	90 days
R. G. Morris	36-23-36	" "	*10-16-52	One Day
Shields	4-25-35	Kans.-Nebraska	Day to day	One Day
White "B"	6-25-36	" "	30 days	30 days
Crawford	7-24-34	" "	30 days	30 days
Martin	14-24-35	" "	30 days	30 days
Cohen	15-24-35	" "	6 mos.	6 mos.
Melton	16-24-35	" "	30 days	30 days
Dodge City	17-24-35	" "	2-8-51	30 days
Bentrup	18-24-35	" "	2-11-51	30 days
Orr	31-24-35	" "	30 days	30 days
Reeve	11-25-33	Northern Nat'l	10 days	10 days

*If not terminated by 10-16-52 will remain committed until 2-14-67.

It is agreed that Seller shall cancel said contracts on the earliest date respectively permitted thereunder after receiving notice from Buyer that it has completed gathering facilities adequate to take the gas produced from the wells covered by said contracts or that Buyer desires to have such contracts canceled. As an when each of said contracts has been canceled by Seller, Buyer shall forthwith connect or arrange for the connection of the wells covered thereby so that an uninterrupted flow of gas from these wells may be maintained. Buyer agrees to use its best efforts to construct and complete its gathering system [fol. 355] or portion thereof at such times as are equivalent to the earliest dates on which each of said contracts may be canceled.

ARTICLE VII

Delivery Point

1. The points of delivery for all gas sold and purchased hereunder shall be at the mouths of the respective wells on the acreage covered hereby.

2. Insofar as Seller is able to convey such rights, Buyer shall have and it is hereby granted an easement and serv-

itude on the acreage covered hereby for installing, operating, and maintaining equipment used in conjunction with the measurement and removal of gas sold and purchased hereunder, shall have the right to operate, inspect, and test such equipment at any time, and shall have free access at all times to any part of Seller's leaseholds for any purpose connected with any matter or thing covered by this agreement.

3. Seller shall be deemed to be in control and possession of the gas deliverable hereunder and responsible for any damage or injury caused thereby until said gas shall have been delivered to Buyer at the delivery points herein provided, after which delivery Buyer shall be deemed to be in exclusive control and possession of the gas and responsible for any injury or damage caused thereby except for the interval during which the gas is being processed by Seller.

ARTICLE VIII

Term

This agreement shall remain in full force and effect from the date hereof for a period of twenty (20) years from said date and as long thereafter as gas shall be produced from the acreage covered hereby in commercial quantities from producing zones above sea level.

ARTICLE IX

Price and Payment

1. Buyer shall pay Seller for all gas purchased by it hereunder the price of 8.4 cents per 1,000 cubic feet until June 23, 1961.

[fol. 356] 2. For all natural gas purchased by Buyer from and after June 22, 1961, the price of such gas shall be the fair and reasonable price for each successive five (5) year period thereafter based on and compared with the price for gas then being paid by other purchasers in the field under similar contracts and conditions, but in no event shall the price be less than 12 cents per 1,000 cubic feet.

3. It is expressly stipulated that the delivery of gas by Seller under this agreement shall not be interrupted because of delay in the determination of the applicable price and the delivery of gas shall continue at the previous effective price. Upon determination of the new price, the price shall be applied retroactively to gas sold during the period when the price was undetermined.

4. If during any fiscal accounting month as herein defined the average gross heating value of the gas delivered by Seller from either the acreage designated as Area "C" on Exhibit "A" or the composite stream from the acreage designated as Areas "A" and "B" on Exhibit "A" shall fall below 900 BTU's per cubic foot, then the price applicable hereunder to be paid by Buyer to Seller for gas delivered during such month from said Area "C" or said Areas "A" and "B" shall be decreased proportionately to the deficiency in gross heating value below 900 BTU's per cubic foot; provided, however, if during any fiscal accounting month, as herein defined, the average gross heating value of the composite stream of the gas delivered by Seller from said Areas "A" and "B" shall fall below 925 BTU's per cubic foot as the result of the processing of such gas by Seller, then the price applicable hereunder to be paid by Buyer to Seller for such gas delivered during such month shall be decreased proportionately to the deficiency in gross heating value below 925 BTU's per cubic foot.

5. Buyer shall render to Seller a statement on the 5th day of each calendar month showing the quantity of gas taken by Buyer hereunder during the next preceding fiscal accounting month. Payment for the quantity of gas reported on such statement shall be made by check delivered to Seller on the 25th day of the same calendar month. Seller may accept such statement and the payment based [fol. 357] thereon, and in the event the same is found incorrect under the provisions hereof, adjustments and payments shall be made accordingly.

ARTICLE X

Measurement

1. The unit of measurement for natural gas sold and purchased hereunder shall be a cubic foot of gas, and the term "cubic foot of gas" wherever used in this agreement shall mean a cubic foot of gas at 16.4 pounds absolute pressure per square inch and at a temperature of sixty degrees (60°) Fahrenheit; provided, however, the unit of measurement for the determination of heating value, hydrogen sulfide content, and sulfur content shall be a cubic foot of gas saturated with water vapor at an absolute pressure of thirty (30) inches of mercury and a temperature of sixty degrees (60°) Fahrenheit.

2. The volume of gas delivered hereunder shall be measured at prevailing meter pressures, and the volume thereof shall be computed on a pressure base of 16.4 pounds per square inch absolute and on a temperature base of sixty degrees (60°) Fahrenheit. It is assumed and agreed that the gas delivered hereunder obeys Boyle's Law and the flowing temperature of the gas in the meter is sixty degrees (60°) Fahrenheit.

The volume shall be computed in accordance with the method prescribed in Gas Measurement Report No. 2, American Gas Association, including the appendix thereto, as published May 6, 1935, or such revisions as may be mutually agreed upon. It is assumed and agreed that the values of the Reynolds number factor and the expansion factor are one. Specific gravity determinations for the purpose of measurement computations shall be made semi-annually at each meter in accordance with an approved method, and these determinations so made shall be used for calculating the volume of gas delivered hereunder.

3. Buyer at its own cost and expense shall install and maintain in accurate repair at the points of delivery hereunder orifice meters of ample size and type and of standard manufacture for the accurate measurement of gas delivered hereunder, and Buyer shall cause said meters to [fol. 358] be read at proper intervals. The meters and respective meter readings and meter charts of Buyer shall

be at all reasonable times accessible to inspection and examination by Seller. The meters shall be calibrated once each month and the orifice plates shall be inspected and calipered at least once each year by and at the expense of Buyer but in the presence of a representative of Seller, if Seller so elects. Reading, calibration, and adjustment of Buyer's meters and changing of charts shall be done only by Buyer, but all data with respect thereto shall at all reasonable times be available to Seller. It is recognized that in some instances it may be impractical to locate said meters at the point of delivery. If in Buyer's opinion it is desirable to locate any meter elsewhere on the lease, then Buyer agrees in such instances to pay Seller for any substantial loss of gas occurring between the point of delivery and such meter.

4. Seller may at its option and expense install and operate check meters to check Buyer's meters, but measurement of gas for the purposes of this agreement shall be by Buyer's meters. Check meters shall be of the orifice type and shall be subject at all reasonable times to inspection or examination by Buyer, but the reading, calibration, and adjustment thereof and changing of charts shall be done only by Seller.

5. If any meter of Buyer's is found to be inoperative or inaccurate, it shall be adjusted to register correctly. The amount of the error shall be determined by the most accurate method found feasible, and if the error is more than two per cent (2%) in the measurement of gas, then the calculated deliveries of gas through such meter shall be adjusted to zero error to compensate for such error. Such adjustment shall be made for such period of inaccuracy as may be definitely known, or if not known, then for one-half the period since the date of the last test.

ARTICLE XI

Quality

1. All gas delivered by Seller to Buyer under the terms of this agreement shall conform to the following specifications:

[fol. 359] (a) The gas shall not contain in excess of one grain of hydrogen sulfide per 100 cubic feet and shall not contain in excess of twenty (20) grains of total sulfur per 100 cubic feet;

(b) The gas shall not contain oxygen in excess of one per cent (1%) by volume;

(c) The gas delivered at each delivery point shall be commercially free from solid matter, dust, gums, and gum forming constituents which might interfere with its merchantibility or cause injury to or interfere with the proper operation of the lines, regulators, meters or other appliances through which it flows.

(d) The gas shall be practically free of water, crude oil, impurities and other objectionable substances, and Seller shall use every reasonable effort to keep the gas entirely free from such liquids and objectionable substances, but shall not be required to install and operate dehydration facilities.

Buyer shall have the right at its election to discontinue or curtail purchases of gas which does not conform to the above specifications.

In the event Buyer shall discontinue taking gas from any well by reason of any of the provisions of this Article, and if in Seller's opinion the gas from such well could not be made acceptable to Buyer by diligent effort, Seller shall thereafter have the right to use or sell the gas from any such well to others free of this contract, and upon written request by Seller the well and the acreage allocated thereto shall thereafter be released from the terms of this contract by Buyer.

ARTICLE XII

Taxes

As between the parties hereto, Seller shall bear or be responsible for the payment of all taxes assessed upon or in respect to the gas produced, sold, and delivered hereunder up to the delivery thereof to Buyer, and Buyer shall bear or be responsible for the payment of all taxes assessed

upon or in respect to such gas on and after such delivery, except that Buyer shall pay Seller for 65 per cent of the [fol. 360] amount by which, from month to month the total of all excise taxes hereafter levied and assessed with respect to the gas produced, sold, and delivered by Seller to Buyer hereunder exceeds the total of all such taxes now levied and assessed with respect to such gas at the date of this agreement, provided that Buyer shall not be obligated to pay for any part of such excess amount attributable to any new or additional tax or taxes which is based upon or measured by the natural gasoline or other liquefied hydrocarbon content extracted from the gas or attributable to the volume of gas consumed or lost by Seller in its processing operations. This payment shall be made from month to month as the taxing agency's rights to collect such taxes accrue and as Buyer pays for gas billed to it hereunder for the preceding month. In no event shall this clause be construed to impose on Buyer any obligation to bear any portion of any ad valorem tax, income or excess profits tax, capital stock or franchise tax assessed against Seller.

ARTICLE XIII

Regulatory Bodies

This contract is subject to all present and future valid laws and lawful orders of all regulatory bodies now or hereafter having jurisdiction of the parties.

ARTICLE XIV

Warranty of Title

Seller hereby warrants title to the gas sold hereunder and the right of Seller to sell the same, and Seller warrants that all such gas is owned by Seller free from all liens and adverse claims, including liens to secure payment of production taxes, severance taxes, and other taxes. Seller shall at all times have the obligation to make settlements for all royalties due and payments to Seller's mineral and royalty owners and to make settlements with all other persons having any interest in the gas sold hereunder, and

Seller agrees to indemnify Buyer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses, and expenses arising from or out of adverse claims of any and all persons to said gas or to royalties, taxes, license fees or charges thereon which are applicable before the title thereto passes to Buyer or which may be levied [fol. 361] and assessed upon the sale thereof to Buyer subject to the terms of Article XII. In the event of any adverse claim of any character whatsoever being asserted in respect to any of said gas, Buyer may retain as security for the performance of Seller's obligations with respect to such claim under this Article the purchase price thereof up to the amount of such claim, without interest, until such claim shall have been finally determined, or until Seller shall have furnished surety bond to Buyer conditioned for the protection of Buyer with respect to such claim.

ARTICLE XV

Indemnity

Each of the parties hereto assumes full responsibility and liability in the maintenance and operation of its respective properties and those under the respective control of said parties and agrees to indemnify and save harmless the other party from all liability and expense on account of any and all damages, claims, actions, costs and expenses, including injury to and death of persons arising from any act or accident in connection with the installation, presence, maintenance, and operation of the property and equipment of the indemnifying party.

ARTICLE XVI

Force Majeure

In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing, or by telegraph, to the other party as soon as possible

after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

[fol. 362] The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension, and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a) in those instances where any party hereto is required to obtain servitudes, rights-of-way grants, permits or licenses to enable such party to fulfill its obligation hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, rights-of-way grants, permits or licenses, and (b) in those instances where any party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligation hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permission.

It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party

when such course is inadvisable in the discretion of the party having the difficulty.

ARTICLE XVII

Miscellaneous

1. Any notice or notices given by either party under [fol. 363] the terms of this agreement shall be sent by registered mail to the following addresses:

(a) Cities Service Gas Company
First National Building
Oklahoma City 1, Oklahoma

(b) Stanolind Oil and Gas Company
Post Office Box 591
Tulsa 2, Oklahoma

The address of either party hereto may be changed under this Section at any time upon written notice. The date of service by mail shall be the date on which such written notice is deposited in the United States Post Office addressed as above provided and with all postage and charges fully prepaid.

2. Seller and Buyer mutually covenant and agree that if at any time during the term of this agreement either party shall sell or otherwise dispose of any of its properties or arrange for the operation thereof which are applicable to or used in the performance of this agreement, such sale, disposition, or arrangement shall only be made to or with a responsible party and shall be made specifically subject to this gas purchase contract; provided, however, that nothing herein contained shall be construed to prevent either party from pledging all or any portion of its property as security under any mortgage, deed of trust, or other similar lien.

3. It is hereby agreed that this agreement shall be subject to the condition that nothing herein shall be construed as affecting any of the relations between the United States and its lessee, particularly in matters of gas waste, taking royalty in kind and the method of computing royalties due

as based on a minimum valuation and in accordance with the terms and provisions of the oil and gas operating regulations applicable to the lands covered by this agreement, and subject to any condition, modification, or revocation that may be prescribed upon review thereof by the Director, Geological Survey, United States Department of the Interior.

4. This agreement and each of its covenants and obligations shall inure to the benefit of and be binding upon the successors, trustees, and assigns of the parties hereto.

[fol. 364] In Witness Whereof the parties hereto have duly executed this agreement as of the date first above written.

Stanolind Oil and Gas Company

By /s/ J. E. Rouk
Vice President

Attest:

/s/ (Illegible)
Assistant Secretary

Cities Service Gas Company

By /s/ S. B. Irelan
President

Attest:

/s/ W. R. Morton
Secretary

[fol. 365] Acknowledgments

State of Oklahoma,
County of Tulsa, ss

Before me, the undersigned, a Notary Public in and for said County and State on this 26th day of July, 1950, personally appeared J. E. Rouk, to me known to be the identical person who subscribed the name of the maker thereof (Stanolind Oil and Gas Company) to the foregoing

instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

/s/ MARJORIE T. WELCH
Notary Public

My Commission expires November 30, 1950.

(Seal)

STATE OF OKLAHOMA,
COUNTY OF OKLAHOMA, *ss*

Before me, the undersigned, a Notary Public in and for said County and State on this 27th day of July, 1950, personally appeared S. B. Irelan, to me known to be the identical person who subscribed the name of the maker thereof (CITIES SERVICE GAS COMPANY) to the foregoing instrument as its President and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

/s/ ROSEMARY BERNEY
Notary Public

My Commission expires Feb. 25, 1954.

(Seal)

[fol. 366]

EXHIBIT A-1

FPC Gas Rate
Schedule No. 84
Supplement No. 1
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 07 AM '54
Federal Power Commission

18196

STANOLIND OIL AND GAS COMPANY
Tulsa, Oklahoma

July 28, 1950

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Gentlemen:

Please refer to that certain Gas Purchase Contract dated June 23, 1950, between us, providing for the sale and purchase of gas from the Kansas Hugoton Field.

This Contract provides by Article IX that from and after June 22, 1961, the price for gas sold thereunder shall be the fair and reasonable price for each successive five-year period thereafter based on and compared with the price of gas then being paid by other purchasers in the field under similar contracts and conditions, but in no event shall the price be less than twelve cents per thousand cubic feet.

It is agreed that, in the event it is necessary to resort to litigation to determine the fair and reasonable price for each successive five-year period, any such litigation if the same be brought in a State court shall be filed and maintained in a court and before a judge whose venue or district does not embrace a substantial gas producing area.

If the foregoing is in accordance with your understanding of our agreement, please indicate your acceptance by signing in the space provided below.

Yours very truly,

STANOLIND OIL AND GAS COMPANY

By /s/ J. E. ROUK
Vice President

ACCEPTED this 29th day
of July, 1950.

CITIES SERVICE GAS COMPANY

By /s/ S. B. IRELAN

COPY

[fol. 367]

EXHIBIT A-2

FPC Gas Rate
Schedule No. 84
Supplement No. 2
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 07 AM '54
Federal Power Commission

18196

STANOLIND OIL AND GAS COMPANY

Tulsa, Oklahoma

July 28, 1950

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Gentlemen:

We have, effective June 23, 1950, entered into with you a new Gas Purchase Contract which supersedes our Gas Purchase Contract of June 13, 1946, covering certain gas producing areas in the Kansas Hugoton Field.

On September 15, 1949, we farmed out to Mr. W. E. Bakke, of San Antonio, Texas, certain leases covered by the Gas Purchase Contract of June 13, 1946. This farm-out was made subject to the Gas Purchase Contract of June 13, 1946, with the understanding that if we entered into a new Gas Purchase Contract with you we would secure the same terms and conditions of the new contract for Mr. Bakke.

We have entered into the new Gas Purchase Contract with the understanding that you will offer to Mr. Bakke the same terms, conditions, and price as are set forth in the Gas Purchase Contract of June 23, 1950, insofar as they are applicable for the gas produced from his acreage covered by the Gas Purchase Contract of June 13, 1946.

If the foregoing is in accordance with your understanding of our agreement, please indicate your acceptance by signing in the space provided below.

Yours very truly,

STANOLIND OIL AND GAS COMPANY

By /s/ J. E. ROUK
Vice President

ACCEPTED this 29th day
of July, 1950.

CITIES SERVICE GAS COMPANY

By /s/ S. B. IRELAN
President

COPY

[fol. 368]

EXHIBIT A-3

FPC Gas Rate
Schedule No. 84
Supplement No. 3
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 07 AM '54
Federal Power Commission

#18196

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

P. O. Box 1654
August 8, 1950

Cities Service Gas Company
Oklahoma City, Okahoma

Gentlemen:

We are selling gas to you from our Bear Gas Unit, Section 17-32S-40W, Morton County, Kansas; in accordance with an agreement reached in exchange of letters between us, ours of March 8, 1949, and yours of March 10, 1949.

Inasmuch as said agreement provided for delivery under the general terms of our contract of June 13, 1946, which contract has now been superseded by our contract of June 23, 1950, it is now necessary to provide some other basis for the continued sale to you of gas from the well on this Unit.

We, therefore, propose to sell and deliver to you the gas from said Unit under the general provisions of said contract of June 23, 1950, as applicable, except that either of us may terminate this arrangement by giving thirty (30) days' written notice to the other.

Our respective corporate signatures hereto will indicate the agreement of each of us to the foregoing proposal.

Yours truly,

STANOLIND OIL AND GAS COMPANY

By /s/ J. E. SWEARINGEN
Its Attorney In Fact

Approved NS

Accepted this 13th day of December, 1950.

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[SEAL]

COPY

[fol. 369]

EXHIBIT A-4

FPC Gas Rate
Schedule No. 84
Supplement No. 4
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 08 AM '54
Federal Power Commission
#18196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Seward County, Kansas, to-wit:

NE/4 Section 23-32S-33W
SE/4 Section 29-34S-33W

and to substitute therefor the following acreage situated in Haskell County, Kansas, to-wit:

S/2 Section 22-30S-33W

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 3rd day of October, 1950.

STANOLIND OIL AND GAS COMPANY

BY: /s/ J. E. SWEARINGEN
J. E. Swearingen
Attorney-in-Fact

CITIES SERVICE GAS COMPANY

BY: /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

Approved NS

[fol. 370]

Received
Nov 16 5 08 AM '54
Federal Power Commission

STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA) ss.

Before me, JANETTE SAUNDERS, a Notary Public, within and for said County and State, on this 3rd day of October, 1950, personally appeared J. E. SWEARINGEN, to me known

to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ JANETTE SAUNDERS
Notary Public

My commission expires:
August 22, 1954.

[SEAL]

STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA)

Before me, ROSEMARY BERNEY, a Notary Public in and for said State, on this 29th day of November, 1950, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[SEAL]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, ROSEMARY BERNEY, a Notary Public in and for said State, on this 29th day of November, 1950, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice-President and acknowledged to that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[SEAL]

[fol. 379]

EXHIBIT A-8

FPC Gas Rate
Schedule No. 84
Supplement No. 8
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 08 AM '54
Federal Power Commission
#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Morton County, Kansas, to-wit:

Northwest Quarter (NW/4) of Section Thirty-Two (32), Township Thirty-two South (T32S), Range Forty West (R40W),

and to substitute therefor the following described acreage situated in Morton County, Kansas, to-wit:

Northwest Quarter (NW/4) of Section Thirty-Two (32), Township Thirty-two South (T32S), Range Forty West (R40W).

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 22 day of November, 1950.

STANOLIND OIL AND GAS COMPANY

By: /s/ J. E. SWEARINGEN
Its Attorney-in-Fact

Approved—EWC, HOL

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[SEAL]

[fol. 380]

STATE OF OKLAHOMA)
) ss
COUNTY OF OKLAHOMA)

Before me, JANETTE SAUNDERS, a Notary Public, within and for said County and State, on this 22 day of November,

[fol. 371]

EXHIBIT A-5

FPC Gas Rate
Schedule No. 84
Supplement No. 5
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 08 AM '54
Federal Power Commission

#18196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situate in Morton County, Kansas, to-wit:

East Half of the Northwest Quarter (E/2 NW/4) of Section Thirty-four (34), Township Thirty-four South (T34S), Range Forty-one West (R41W).

and to substitute therefor the following described acreage situate in Finney County, Kansas, to-wit:

Lot Five (5) and Lot Six (6) of Section Fifteen (15), Township Twenty-four South (T24S), Range Thirty-three West (R33W).

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last

above described, and Buyer hereby approves said substitution.

DATED, This 5th day of October, 1950.

STANOLIND OIL AND GAS COMPANY

By: /s/ J. E. SWEARINGEN
J. E. Swearingen, Attorney-in-Fact

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD
Vice President

Approved—EWC, NS

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[SEAL]
[fol. 372]

STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA)

Before Me, JANETTE SAUNDERS, a Notary Public, within and for said County and State, on this 3rd day of October, 1950, personally appeared J. E. SWEARINGEN, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ JANETTE SAUNDERS
Notary Public

My Commission expires:
August 22, 1954

[SEAL]

STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA)

Before Me, ROSEMARY BERNEY, a Notary Public in and for said State, on this 29th day of November, 1950, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice Prysident and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My Commission expires:
Feb. 25, 1954

[SEAL]

[fol. 373]

EXHIBIT A-6

Received
Nov 16 5 08 AM '54
Federal Power Commission

FPC Gas Rate
Schedule No. 84
Supplement No. 6
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Oct 16 1960
Producing Department

#18,196

CITIES SERVICE GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY 7, OKLAHOMA

October 11, 1950

Stanolind Oil and Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. E. F. Diwoky

Gentlemen:

Pursuant to your Mr. Diwoky's letter of September 1, 1950, relative to the accounting of gas used and retained in liquid form at the Stano plant, Grant County, Kansas, this will advise that the proposed method for determining such gas as outlined in Mr. Diwoky's letter is agreeable and acceptable to Cities Service Gas Company until such future time as it may be mutually desirable to Stanolind and Cities Service to amend the procedure.

In connection with the method proposed it is our understanding that:

(1) Stanolind will install, operate and maintain a master meter on all plant fuel.

(2) Stanolind will install, operate and maintain a meter on the flare gas line at said plant.

Cities Service is to have the right to witness tests and gravity determinations on the above meters. Stanolind will report the volumes recorded by said meters to Cities Service daily and forward the charts from same to Cities Service at the end of each accounting month for checking. Said charts will be returned to Stanolind for filing.

(3) Stanolind will report daily the volumes of natural gasoline and L.P.G. products produced and the vapor pressure thereof. Cities shall have the right to request samples periodically of each product for a fractional analysis determination.

It is our thought this method of accounting should be put into effect as of September 23 with respect to the liquid hydrocarbons retained, and effective with respect to plant fuel and flare gas as soon as Stanolind can install said meters.

Yours very truly,

/s/ Geo. H. Baird
Vice President

George H. Baird/jh

[fol. 374]

Received
Nov 16 5 08 AM '54
Federal Power Commission

TABLE NO. 1

NATURAL GASOLINE

Cubic Feet of Gas at 16.4 PSIA and 60° F. Per Gallon of Gasoline Vs Reid Vapor Pressure at 100° F., Calculated for Stano Plant, Ulysses, Kansas

Reid Vapor Pressure PSIA at 100° F.	Cubic Feet of Gas (16.4# & 60° F.) per Gallon of Gasoline
7.50- 8.49 Lbs.	21.87 Cu. Ft.
8.50- 9.49	22.24
9.50-10.49	22.56
10.50-11.49	22.76
11.50-12.49	22.96
12.50-13.49	23.09
13.50-14.49	23.21
14.50-15.49	23.33
15.50-16.49	23.45
16.50-17.49	23.58
17.50-18.49	23.70
18.50-19.49	23.82
19.50-20.49	23.95
20.50-21.49	24.08
21.50-22.49	24.21
22.50-23.49	24.34
23.50-24.49	24.47
24.50-25.49	24.61
25.50-26.49	24.74
26.50-27.49	24.87
27.50-28.49	25.00
28.50-29.49	25.14
29.50-30.49	25.28
30.50-31.49	25.42
31.50-32.49	25.57
32.50-33.49	25.72
33.50-34.49	25.88
34.50-35.49	26.04

EJY/me
1/9/51

[fol. 375]

TABLE NO. 2

LPG

Cubic Feet of Gas at 16.4 PSIA and 60° F. Per Gallon of LPG Vs NGAA Vapor Pressure PSIG at 100° F., Calculated for Stano Plant Ulysses, Kansas, Elevation 3146', Average Atmospheric Pressure 13.1 PSIA

Vapor Pressure NGAA	Cu. Ft. per Gallon	Vapor Pressure NGAA	Cu. Ft. per Gallon	Vapor Pressure NGAA	Cu. Ft. per Gallon
45.50- 46.49	28.11	90.50- 91.49	29.52	135.50-136.49	31.09
46.50- 47.49	28.14	91.50- 92.49	29.55	136.50-137.49	31.13
47.50- 48.49	28.17	92.50- 93.49	29.58	137.50-138.49	31.17
48.50- 49.49	28.20	93.50- 94.49	29.62	138.50-139.49	31.21
49.50- 50.49	28.23	94.50- 95.49	29.65	139.50-140.49	31.25
50.50- 51.49	28.26	95.50- 96.49	29.68	140.50-141.49	31.28
51.50- 52.49	28.29	96.50- 97.49	29.71	141.50-142.49	31.32
52.50- 53.49	28.32	97.50- 98.49	29.75	142.50-143.49	31.35
53.50- 54.49	28.35	98.50- 99.49	29.79	143.50-144.49	31.39
54.50- 55.49	28.38	99.50-100.49	29.82	144.50-145.49	31.43
55.50- 56.49	28.41	100.50-101.49	29.86	145.50-146.49	31.47
56.50- 57.49	28.44	101.50-102.49	29.89	146.50-147.49	31.51
57.50- 58.49	28.47	102.50-103.49	29.92	147.50-148.49	31.54
58.50- 59.49	28.50	103.50-104.49	29.96	148.50-149.49	31.58
59.50- 60.49	28.53	104.50-105.49	29.99	149.50-150.49	31.62
60.50- 61.49	28.57	105.50-106.49	30.02	150.50-151.49	31.66
61.50- 62.49	28.60	106.50-107.49	30.06	151.50-152.49	31.70
62.50- 63.49	28.63	107.50-108.49	30.09	152.50-153.49	31.74
63.50- 64.49	28.66	108.50-109.49	30.13	153.50-154.49	31.78
64.50- 65.49	28.69	109.50-110.49	30.16	154.50-155.49	31.82
65.50- 66.49	28.72	110.50-111.49	30.20	155.50-156.49	31.86
66.50- 67.49	28.76	111.50-112.49	30.23	156.50-157.49	31.89
67.50- 68.49	28.79	112.50-113.49	30.27	157.50-158.49	31.93
68.50- 69.49	28.82	113.50-114.49	30.31	158.50-159.49	31.97
69.50- 70.49	28.85	114.50-115.49	30.34	159.50-160.49	32.01
70.50- 71.49	28.88	115.50-116.49	30.37	160.50-161.49	32.05
71.50- 72.49	28.91	116.50-117.49	30.40	161.50-162.49	32.09
72.50- 73.49	28.94	117.50-118.49	30.44	162.50-163.49	32.13
73.50- 74.49	28.97	118.50-119.49	30.48	163.50-164.49	32.17
74.50- 75.49	29.00	119.50-120.49	30.51	164.50-165.49	32.21
75.50- 76.49	29.03	120.50-121.49	30.55	165.50-166.49	32.25
76.50- 77.49	29.07	121.50-122.49	30.58	166.50-167.49	32.29
77.50- 78.49	29.10	122.50-123.49	30.62	167.50-168.49	32.33

Vapor Pressure NGAA	Cu. Ft. per Gallon	Vapor Pressure NGAA	Cu. Ft. per Gallon	Vapor Pressure NGAA	Cu. Ft. per Gallon
78.50- 79.49	29.13	123.50-124.49	30.66	168.50-169.49	32.37
79.50- 80.49	29.16	124.50-125.49	30.69	169.50-170.49	32.40
80.50- 81.49	29.19	125.50-126.49	30.73	170.50-171.49	32.44
81.50- 82.49	29.23	126.50-127.49	30.76	171.50-172.49	32.48
82.50- 83.49	29.26	127.50-128.49	30.80	172.50-173.49	32.52
83.50- 84.49	29.29	128.50-129.49	30.83	173.50-174.49	32.56
84.50- 85.49	29.32	129.50-130.49	30.87	174.50-175.49	32.60
85.50- 86.49	29.36	130.50-131.49	30.91	175.50-176.49	32.64
86.50- 87.49	29.39	131.50-132.49	30.94		
87.50- 88.49	29.42	132.50-133.49	30.98		
88.50- 89.49	29.45	133.50-134.49	31.02		
89.50- 90.49	29.48	134.50-135.49	31.06		

EJY/me
1/9/51

[fol. 376]

TABLE NO. 3

HIGH VAPOR PRESSURE LPG

Cubic Feet of Gas at 16.4 PSIA and 60° F. Per Gallon of Propane-Ethane Mixture Vs NGAA Vapor Pressure PSIG at 100° F., Calculated for Stano Plant, Ulysses, Kansas, Elevation 3146', Average Atmospheric Pressure 13.1 PSIA.

Vapor Pressure (NGAA) PSIG at 100° F. at Stano Plant.	Cubic Feet of Gas (16.4# & 60° F.) per Gallon of LPG
176.5-184.9	32.68
185.0-194.9	32.72
195.0-204.9	32.76
205.0-214.9	32.80
215.0-224.9	32.84
225.0-234.9	32.88
235.0-244.9	32.92
245.0-254.9	32.96
255.0-264.9	33.00
265.0-274.9	33.04
275.0-284.9	33.08
285.0-294.9	33.12
295.0-304.9	33.16

EJY/me
(Date Illegible)

[fol. 377]

EXHIBIT A-7

FPC Gas Rate
Schedule No. 84
Supplement No. 7
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 08 AM '54
Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Stanton County, Kansas, to-wit:

SW/4 Section 13-27S-40W

and to substitute therefor the following described acreage situated in Stanton County, Kansas, to-wit:

SW/4 Section 18-27S-39W

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last

above described, and Buyer hereby approves said substitution.

DATED, This 16th day of October, 1950.

STANOLIND OIL AND GAS COMPANY

By: /s/ J. E. SWEARINGEN
J. E. Swearingen, Attorney-in-Fact

Approved—EWC, NS

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[SEAL]

[fol. 378]
STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, JANETTE SAUNDERS, a Notary Public, within and for said County and State, on this 16th day of October, 1950, personally appeared J. E. SWEARINGEN, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ JANETTE SAUNDERS
Notary Public

My commission expires:

[SEAL]

1950, personally appeared J. E. SWEARINGEN, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

/s/ JANETTE SAUNDERS
Notary Public

My commission expires:

My commission expires Aug. 22, 1954.

[SEAL]

STATE OF OKLAHOMA)
) ss
COUNTY OF OKLAHOMA)

Before me, ROSEMARY BERNEY, a Notary Public in and for said County and State, on this 29th day of November, 1950, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires
Feb. 25, 1954.

[SEAL]

[fol. 381]

EXHIBIT A-9

FPC Gas Rate
Schedule No. 84
Supplement No. 9
Filing Date: Nov. 16 1954
Effective Date: Accepted

Received
Nov 16 5 08 AM '54
Federal Power Commission

#18,196

November 29, 1950

Stanolind Oil and Gas Company
Stanolind Building
Tulsa, Oklahoma

Gentlemen:

You notified us that you have one-half interest in a well and the acreage in Section 24-24-37 in the Kansas-Hugoton Field and that Gulf Oil Company owns the other one-half interest in that section and well. You further advised that under contractual arrangement with Kansas-Nebraska Gas Company it is to purchase the production from the Gulf's one-half interest and that a line would be laid by Kansas-Nebraska to the well in the near future through which they would take that gas.

We have talked with a representative of the Kansas-Nebraska Gas Company and requested them to prepare and forward to us a contract covering the purchase from us of the gas allocable to your interest in said well and acreage. The contract will be subject to 30 days termination.

We will purchase your part of the gas from said well under our present gas purchase contract with your company and will pay you, therefore, the 8.4 cents per Mcf provided in that contract. We will also pay you the 6/10 cent per Mcf provided in the Bill of Sale covering our acquisition of the "A" gathering system.

If the foregoing arrangement for temporary outlet for your portion of said gas is satisfactory, please execute this

letter in the space provided and return to us two such executed copies.

Yours very truly,

CITIES SERVICE GAS COMPANY

/s/ GEO. H. BAIRD
Vice President

Geo. H. Baird
STANOLIND OIL AND GAS COMPANY

By: /s/ J. E. SWEARINGEN
Its Attorney-in-Fact

This 13 day of December 1950.

Approved—NS

[fol. 382]

EXHIBIT A-10

FPC Gas Rate
Schedule No. 84
Supplement No. 10
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 08 AM '54
Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same covers the following described lands situated in Kearny County, Kansas, to-wit:

N/2 and SW/4 Section 6-25S-37W

and to substitute therefor the following acreage situated in Stanton County, Kansas, to-wit:

W/2 and SE/4 Section 31-27S-39W

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same covers the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 13 day of December, 1950

STANOLIND OIL AND GAS COMPANY

By: /s/ J. E. SWEARINGEN
J. E. Swearingen
Attorney-in-Fact

Approved—HOL

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD
Vice-President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[fol.383]

STATE OF OKLAHOMA)
) SS.
COUNTY OF OKLAHOMA)

Before me, JANETTE SAUNDERS, a Notary Public, within and for said County and State, on this 13 day of December, 1950, personally appeared J. E. SWEARINGEN, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed,

and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ JANETTE SAUNDERS
Notary Public

My commission expires:
My Commission Expires Aug. 22, 1954

[SEAL]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before me, ROSEMARY BERNEY, a Notary Public, in and for said State on this 20th day of December, 1950, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice-President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof, I hereunto set my hand and official seal.

ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 384]

EXHIBIT A-11

FPC Gas Rate
Schedule No. 84
Supplement No. 11
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 08 AM '54
Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands, to-wit:

E/2 Section 36-31S-33W, Seward County, Kansas
NW/4 Section 22-22S-35W, Kearny County, Kansas

and to substitute therefor the following described acreage situated in Seward County, Kansas, to-wit:

N/2 Section 26-31S-33W

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above

described, and Buyer hereby approves said substitution.

DATED, This 5th day of February, 1951.

STANOLIND OIL AND GAS COMPANY

By: /s/ V. G. HILL
Its Attorney in Fact

Approved—EMC, HOL

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[fol. 385]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, HELEN E. MOISES, a Notary Public, within and for said County and State, on this 5th day of February, 1951, personally appeared V. G. STIER, to be known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ HELEN E. MOISES
Notary Public

My commission expires:
Aug. 22, 1953.

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, ROSEMARY BERNEY, a Notary Public, in and for said State, on this 15th day of February, 1951, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY, to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 386]

EXHIBIT A-12

FPC Gas Rate
Schedule No. 84
Supplement No. 12
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 09 AM '54
Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands, to-wit:

E/2 Section 25-25S-37W, S/2 Section 2-26S-37W, N/2 Section 16, NE/4 Section 2-24S-36W, W/2 and SE/4 Section 2, N/2 and SE/4 Section 26-24S-37W, Kearny

County, Kansas, and all Section 9-24S-34W, Finney County, Kansas,

and to substitute therefor the following described acreage situated in Kearny County, Kansas, to-wit:

E/2 Section 16, the N/2 Section 26, the NE/4 Section 24, all of Section 3-26S-38W, S/2 NW/4 Section 10, that part of the E/2 W/2 north of the Arkansas River, in Section 16, SE/4 and N/2 and that part of the W/2 SW/4 north of the Arkansas River, in Section 8-25S-37W; W/2 SW/4 Section 9-24S-36W, SW/4 Section 20-24S-37W and NW/4 Section 32-23S-37W, Kearny County, Kansas.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

Dated, This 23rd day of February, 1951.

STANOLIND OIL AND GAS COMPANY

By: /s/ V. G. HILL
V. G. Hill, Attorney-in-Fact

Approved—EMC, NS, DMN

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[fol. 387]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, M. J. HITCHCOCK, a Notary Public, within and for said County and State, on this 23rd day of February, 1951, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires: July 21, 1953

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, ROSEMARY BERNEY, a Notary Public in and for said State, on this 1st day of March, 1951, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires: Feb. 25, 1954

[fol. 388]

EXHIBIT A-13

FPC Gas Rate
Schedule No. 84
Supplement No. 13
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 09 AM '54
Federal Power Commission

#18,196

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

P. O. Box 1654
May 18, 1954

Subject: Release of Acreage
Gas Purchase Contract
Cities Service Gas Company
Hugoton Field, Kansas

Cities Service Gas Company
P. O. Box 1995
Oklahoma City, Oklahoma

Gentlemen:

Among the acreage included under our contract with you dated June 23, 1950, is the Peppercorn Gas Unit, Section 4-30S-40W, Stanton County, Kansas. A gas well has been completed on the subject unit and has been shut-in since August, 1946. Tests according to the Bureau of Mines method were run on this well in September, 1948 and indicated a deliverability of only 58 MCF per day. The well is located on the extreme west edge of the "A" area and is about three miles from the nearest wells presently connected to your system.

Inasmuch as this well is not a commercial well as defined under the referenced contract, and in view of the fact that its extremely low productivity makes it seem undesirable and unprofitable to continue to make shut-in payments on the lease, we desire to dispose of this acreage. Unless Cities Service Gas Company desires to acquire this acreage,

we ask that you please indicate your consent to the release of the above described acreage from said contract of June 23, 1950 by signing this agreement in the space provided below.

Yours very truly,

STANOLIND OIL AND GAS COMPANY

/s/ V. G. HILL
Its Attorney In Fact

Approved—FFD, AGD, D

The aforesaid lease acreage is hereby released from the subject contract.
Agreed to this 21st day of May 1951.

CITIES SERVICE GAS COMPANY

/s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst Secretary

COPY

[fol. 389]

EXHIBIT A-14

FPC Gas Rate
Schedule No. 84
Supplement No. 14
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 09 AM '54
Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950,

said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands, to-wit:

All of Section 8-25S-37W, Kearny County, Kansas and to substitute therefor the following described acreage situated in Kearny County, Kansas, to-wit:

All of Section 2-24S-37W, Kearny County, Kansas

Now, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

Dated, This 31st day of May, 1951.

STANOLIND OIL AND GAS COMPANY

By: /s/ V. G. HILL
V. G. Hill
Attorney-in-Fact

Approved—EMC, HOL

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst Secretary

[fol. 390]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 31st day of May, 1951, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires: July 21, 1953

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, ROSEMARY BERNEY, a Notary Public, in and for said State, on this 7th day of June, 1951, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires: Feb 25, 1954

[fol. 391]

EXHIBIT A-15

FPC Gas Rate
Schedule No. 84
Supplement No. 15
Filing Date: Nov 16 1954
Effective date: Accepted

Received
Nov 16 5 09 AM '54
Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands, to-wit:

W/2 Section 3-26S-38W, Kearny County, Kansas

and to substitute therefor the following described acreage situated in Kearny County, Kansas, to-wit:

SE/4 Section 2-26S-37W; NE/4 Section 26-24S-37W; Lot 2 and NE/4 SW/4 Section 8-25S-37W, Kearny County, Kansas.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer approves said substitution.

DATED, This 25 day of June, 1951.

STANOLIND OIL AND GAS COMPANY

By /s/ J. H. FORRESTER
J. H. Forrester
Attorney-in-Fact

Approved—EMC, HOL

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[fol. 392]
STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, JANETTE SAUNDERS, a Notary Public, within and for said County and State, on this 25 day of June, 1951, personally appeared J. H. FORRESTER, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ JANETTE SAUNDERS
Notary Public

My commission expires:
My Commission Expires Aug. 22, 1954

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, ROSEMARY BERNEY, a Notary Public, in and for said State, on this 29th day of June, 1951, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 393]

EXHIBIT A-16

FPC Gas Rate
Schedule No. 84
Supplement No. 16
Filing Date: 11-16-54
Effective Date: Accepted

Received
Nov 16 5 09 AM '54
Federal Power Commission
#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Hamilton and Stanton Counties, Kansas, to-wit:

SW/4 Section 25-25S-39W and NE/4 Section 10-26S-39W, Hamilton County, Kansas; the E/2 Section 35-27S-40W, SE/4 Section 5 and SE/4 Section 21-29S-40W, Stanton County, Kansas

and to substitute therefor the following described acreage situated in Hamilton and Stanton Counties, Kansas, to-wit:

> Lots 3 and 4, S/2 N/2 and SW/4 Section 2-26S-39W, Hamilton County, Kansas; the NW/4 Section 10-28S-40W, and NW/4 Section 8-30S-40W, Stanton County, Kansas.

Now, Therefore, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

> Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.
>
> Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

Dated, This 2 day of July, 1951.

Stanolind Oil and Gas Company

By: /s/ J. H. Forrester
J. H. Forrester
Its Attorney-in-Fact

Approved—EMS, NS

Cities Service Gas Company

By: /s/ Geo. H. Baird
Vice President

Attest:

/s/ A. W. Levan
Asst. Secretary

[fol. 394]
STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

BEFORE ME, JANETTE SAUNDERS, a Notary Public, within and for said County and State, on this 2 day of July, 1951, personally appeared J. H. FORRESTER, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

/s/ JANETTE SAUNDERS
Notary Public

My commission expires:
My Commission Expires: Aug. 22, 1954

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

BEFORE ME, ROSEMARY BERNEY, a Notary Public in and for said State, on this 14th day of July, 1951, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 395]

EXHIBIT A-17

FPC Gas Rate
Schedule No. 84
Supplement No. 17
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 09 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

P. O. Box 1654
July 25, 1951

Subject: Termination of Short Term Contracts
Hugoton Field, Kansas

Colorado Interstate Gas Company
Box 1087
Colorado Springs, Colorado

Attn: Mr. Robert W. Hendee

Gentlemen:

We are selling gas to you from wells on the below named properties in Hugoton Field, Kansas, under short term contracts. You are aware that the gas from these wells is dedicated to Cities Service Gas Company under a long term contract between that company and us.

Cities Service, being now ready to extend its gathering system thereto, has called upon us as provided in our contract with them for the termination of our short term gas sales agreements covering these wells. Accordingly as provided in our contracts with you, which respective contracts are identified below by date thereof and by property covered therein, we hereby notify you of our election to terminate each of these contracts insofar as they cover our interest in the gas sold thereunder, said termination to be effective as

of the date shown under the caption, "Designated Date of Cancellation".

	Lease or Unit	Date of Contract	Notice Required to Cancel	Designated Date of Cancellation
17,635	Waechter "H"	3-1-50	6 months	1-25-52
14,315	Waechter "F"	1-26-48	30 days	10-23-51
14,068	Willits "B"	10-16-47	1 day	10-23-51
14,068	Dann	10-16-47	1 day	10-23-51
14,068	Campbell "D"	10-16-47	1 day	10-23-51
14,068	Shell	10-16-47	1 day	10-23-51
17,063	Strawn	11-16-49	6 months	1-25-52
17,635	Tate-Hutton	3-1-50	6 months	1-25-52
13,682	J. D. Hillman	7-29-47	90 days	10-23-51
14,068	R. G. Morris	10-16-47	1 day	10-23-51

An acknowledgment of the receipt of this notice by you will be appreciated.

Yours very truly,

STANOLIND OIL AND GAS COMPANY

By /s/ K. W. BOLT
Its Attorney-in-Fact

Approved—SOH, FFD
18196

LSL:mt

COPY

Italics indicate handwritten material.

[fol. 396]

EXHIBIT A-18

FPC Gas Rate
Schedule No. 84
Supplement No. 18
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 09 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

P. O. Box 1654
July 25, 1951

Subject: Termination of Short Term Contracts
Hugoton Field, Kansas

Kansas Nebraska Natural Gas Co., Inc.
Hastings, Nebraska

Gentlemen:

We are selling gas to you from wells on the below named properties in Hugoton Field, Kansas, under short term contracts. You are aware that the gas from these wells is dedicated to Cities Service Gas Company under a long term contract between that company and us.

Cities Service, being now ready to extend its gathering system thereto, has called upon us as provided in our contract with them for the termination of our short term gas sales agreements covering these wells. Accordingly as provided in our contracts with you, which respective contracts are identified below by date thereof and by property covered therein, we hereby notify you of our election to terminate each of these contracts insofar as they cover our interest in the gas sold thereunder, said termination to be effective

as of the date shown under the caption, "Designated Date of Cancellation".

Lease or Unit	Date of Contract	Notice Required to Cancel	Designated Date of Cancellation
16,587 White "B"	7-7-49	30 days	10-23-51
16,587 Crawford Gas Unit	7-7-49	30 days	10-23-51
16,587 Martin Gas Unit	7-7-49	30 days	10-23-51
14,273 Cohen Gas Unit	12-15-47	6 months	1-25-52
16,587 Melton Gas Unit	7-7-49	30 days	10-23-51
17,035 Dodge City Gas Unit	11-10-49	30 days	10-23-51
17,035 Bentrup Gas Unit	11-10-49	30 days	10-23-51
No Cont. Orr Gas Unit	Verbal only	At Seller's option	10-23-51

An acknowledgment of the receipt of this notice by you will be appreciated.

Yours very truly,

STANOLIND OIL AND GAS COMPANY

By /s/ K. W. BOLT
Its Attorney-in-Fact

Approved—SOH, FFD
18196

LSL:mt

COPY

Italics indicate handwritten material.

[fol. 397]

EXHIBIT A-19

FPC Gas Rate — *13,682—14,068*
Schedule No. 84 — *14,315—17,013*
Supplement No. 19 — *17,452—17,481*
Filing Date: Nov 16, 1954 — *17,635*
Effective Date: Accepted

Received
Nov 16 5.09 AM '54
Federal Power Commission

[Emblem]

CITIES SERVICE GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY 1, OKLAHOMA

August 29, 1951

Stanolind Oil and Gas Company
P. O. Box 1654
Oklahoma City 1, Oklahoma

Attention: Mr. F. F. Diwoky

Gentlemen:

Find hereto attached two copies of proposed agreement with the Colorado Interstate Company whereby they will release wells owned by Stanolind and dedicated to us but now connected to the Colorado Interstate system on temporary agreements prior to the normal cancellation dates. This prior release is requested so that we may reclaim the pipe connecting these wells into the Colorado Interstate system and have it available for use immediately in our 1951 gathering line program. At such a time as the wells are disconnected from the Colorado Interstate system they will be connected into our new gathering system.

In exchange for their agreeing to early termination of the contracts, we agree to make an interconnection with their system and sell and deliver to them gas in quantities equivalent to that which they would have received from the wells had they remained connected to the Colorado system until normal cancellation date.

Italics indicate handwritten material.

If you are agreeable to this transaction between us and Colorado Interstate as outlined above and as provided in the attached agreement, please sign in the space provided below and return one copy for our files.

Yours very truly,

CITIES SERVICE GAS COMPANY

/s/ GEO. H. BAIRD
Geo. H. Baird, Vice President

GHB/c
attach.

ACCEPTED:

STANOLIND OIL AND GAS COMPANY

By /s/ J. E. Swearingen
Its Attorney-In-Fact

Approved—FFD, NS
[fol. 398]

18196

Received
Nov 16 5 09 AM '54
Federal Power Commission

#18,196

METHOD OF CALCULATION OF CUBIC FEET OF GAS PER GALLON OF PROPANE-ETHANE MIXTURE

The physical constants for propane and ethane used in this calculation are taken from NGAA Standard Table No. 2145, (Year 1945) as follows:

	Propane	Ethane
Standard Cubic Feet of Vapor (60° F. & 14,696#) per Gallon of Liquid	36.45	39.35
True Vapor Pressure at 100° F., PSIA	189.5	——

The "apparent" vapor pressure of ethane at 100°F. in blends containing a low ethane content, as quoted by Brown, Katz, Oberfel, and Alden in "Natural Gasoline and the

Volatile Hydrocarbons" 1948, (NGAA) and used in this calculation is 795 PSIA.

Component	Mol %		True V.P. PSIA		Partial V.P. PSIA		Std. Cu. Ft.		Std. Cu. Ft. per Gal.		Gallons
Ethane	10	×	795	=	79.50		10	÷	39.35	=	0.2541
Propane	90	×	189.5	=	170.55		90	÷	36.45	=	2.4691
Total	100				250.05		100				2.7232

$100 \div 2.7232 = 36.72$ Cu. Ft./Gal.

The calculated NGAA vapor pressure at 100°F. at Stano Plant is 250.05-13.1 = 236.95 PSIG

The calculated true vapor pressure of a propane-ethane mixture is:

$$TVP = 189.5 + \text{Mol \% } C_2 \times (7.950\text{-}1.895)$$
$$= 189.5 + (\text{Mol \% } C_2 \times 6.055)$$

$$\text{Mol \% } C_2 = \frac{TVP\text{-}189.5}{6.055} = \frac{VP(NGAA)\text{-}176.4}{6.055}$$

[fol. 399] The standard cubic feet of gas (60°F. & 14.696 PSIA) per gallon of propane-ethane mixture are:

$$\frac{100}{\frac{100}{36.45} - \text{Mol \% } C_2 \left(\frac{1}{36.45} - \frac{1}{39.35}\right)}$$

$$= \frac{100}{2.743{,}484{,}200 - \text{Mol \% } C_2 \ (.027{,}434{,}842\text{-}.025{,}412{,}961)}$$

$$= \frac{100}{2.743{,}484{,}200 - \text{Mol \% } C_2 \ (.002{,}021{,}881)}$$

$$= \frac{100}{2.743{,}484{,}200 - \left(\frac{VP\text{-}176.4}{6.055} \times .002{,}021{,}881\right)}$$

$$= \frac{100}{2.743{,}484{,}200 - [(VP\text{-}176.4) \times .000{,}333{,}919{,}24]}$$

The cubic feet of gas at 60° F. and 16.4 PSIA per gallon of propane-ethane mixture are:

$$\frac{100 \times \frac{14.696}{16.4}}{2.743{,}484{,}200 - [(VP\text{-}176.4) \times .000{,}333{,}919{,}24]}$$

$$= \frac{89.609756}{2.743{,}484{,}200 - [(VP(NGAA)\text{-}176.4) \times .000{,}333{,}919{,}24]}$$

EJY:me
3/21/51

18196

[fol. 400]

EXHIBIT A-20

FPC Gas Rate
Schedule No. 84
Supplement No. 20
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 09 AM '54
Federal Power Commission
#18,196

[Emblem]

CITIES SERVICE GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY 1, OKLAHOMA

August 31, 1951

Stanolind Oil and Gas Company
P. O. Box 1654
Oklahoma City, Oklahoma

Gentlemen:

On several occasions we have discussed with representatives of your company an agreement which we are endeavoring to make with Kansas-Nebraska Natural Gas Company for the exchange of gas in the Kansas Hugoton Field. Under this agreement, if made, we will connect to their gathering system a small group of wells which are more or less isolated in location and are in close proximity to the gathering system of Kansas-Nebraska. They likewise will deliver gas to us from some of their wells which are somewhat isolated from their system and are in close proximity

to ours. The gathering systems of the respective companies will be interconnected at some point of crossing in order to balance the receipts of gas by each of the parties from the other.

In order to accomplish this arrangement with Kansas-Nebraska, it is necessary that we agree to sell them a small quantity of gas if they need it and if we have allowables from the wells connected to their gathering system over and above that which we need for our own markets. The sale of gas to Kansas-Nebraska will be temporary and their right to purchase such gas shall expire not later than October 22, 1953. The gas which we will sell to Kansas-Nebraska under this arrangement will, of course, be raw gas and will not be available for treatment in your Stano Plant. However, in order that you will suffer no loss through waiving the right to extract liquids from gas which we may sell to Kansas-Nebraska, we propose to enter into an agreement with United Producing Company as outlined below.

As you know, we are now receiving raw gas from United's gathering system serving its carbon black plant in the Hugoton Field. United has some undedicated acreage immediately west of our "A" and "B" gathering systems upon which there are twenty-two wells drilled and to be drilled. Under our existing contract with United, they are obligated to deliver certain quantities of gas. They will substitute gas from the twenty-two wells above referred to on a short term and undedicated basis for gas from acreage dedicated to us which gas is now being delivered through United's system. The aggregate amount of gas which this company will receive from United will not be increased if this substitution is made. By this deal, United will have more gas available for its carbon black processing and this company will receive the same amount of gas as it would if the twenty-two wells were not connected to us. There would be no advantage to us by allowing such substitution by United. However, it would be of advantage to you because such substituted gas from the twenty-two wells would [fol. 401] be available for processing by you in your Stano Plant.

We recognize that under our existing processing agreement you have the right to process gas which may be brought into our "A" or "B" gathering systems and through your plant. Our main consideration, however, in going forward with this agreement with United would be to meet your objections to the loss of liquid hydrocarbons which could have been extracted from any gas which we sell to Kansas-Nebraska under the above mentioned exchange agreement. In order to safeguard you against loss, we agree that the volume of excess gas sold to Kansas-Nebraska shall not exceed that which we receive from United under our proposed substitution agreement with that company.

It should be pointed out also that the consummation of the exchange agreement with Kansas-Nebraska will provide a solution to another problem, namely, that of marketing the gas from three of your joint interest wells, the Orr, Shields, and Wheeler "B", all of your interest therein being dedicated to us and the other interest being dedicated to Kansas-Nebraska. The proposed exchange will avoid the establishment of dual connections which so far the Kansas Corporation Commission has been unwilling to grant.

Another advantage to you in our making the proposed arrangements with Kansas-Nebraska is that it will be possible to connect your Taggart No. 1 in Section 8-24-34, Finney County, Kansas, to Kansas-Nebraska's gathering system prior to your October 10 lease expiration date, whereas it is physically impossible for us to connect such well to our gathering system prior to such expiration date.

If you approve the proposed gas exchange, the wells on the below listed acreage from which your gas is dedicated to us under our Gas Purchase Contract of June 23, 1950, will be connected to Kansas-Nebraska's line, but it is understood that they will remain under the above mentioned Gas Purchase Contract and gas taken from such wells will be accounted for by us to you in accordance with said contract:

	Lease or Unit Designation	Location	% Stanolind Working Interest
1.	Crawford	Section 7-24S-34W Finney County, Kansas	100%
2.	Taggart	Section 8-24S-34W Finney County, Kansas	100%
3.	Martin	Section 14-24S-35W Kearny County, Kansas	100%
4.	Bardwell	Section 23-24S-35W Kearny County, Kansas	100%
5.	Dyckman "A"	Section 26-24S-35W Kearny County, Kansas	100%
6.	Dyckman "B"	Section 27-24S-35W Kearny County, Kansas	100%
7.	Shields	Section 4-25S-35W Kearny County, Kansas	49.7393%
8.	Orr	Section 31-24S-35W Kearny County, Kansas	50%
9.	Beymer "B"	Section 7-25-36 Kearny County, Kansas	52.4618%

[fol. 402] We agree to give you a monthly statement of the volume of excess gas sold to Kansas-Nebraska and of the amounts exchanged and in addition, we will give you a like statement of the volume received from United under the proposed agreement with them. We agree that you shall have the right to inspect the balancing meter at the point of interconnection between our system and Kansas-Nebraska's and the meters measuring gas into our system under the proposed agreement with United to the same extent that under our existing contract you have the right to inspect meters measuring gas from Stanolind's wells into our system.

If it is agreeable with you for us to proceed to make the above outlined agreements with Kansas-Nebraska and United in accordance with the conditions set forth above, will you please so indicate in the space hereinbelow provided and return two executed copies of this letter for our

files. We shall then proceed to final execution of our United and Kansas-Nebraska agreements above described.

Yours very truly,

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

Accepted this 7th day of September 1951

STANOLIND OIL AND GAS COMPANY

By /s/ (Illegible)
Vice President

Approved—FFD, SSM, KRG, CL

[fol. 403]

EXHIBIT A-21

FPC Gas Rate
Schedule No. 84
Supplement No. 21
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 09 AM '54
Federal Power Commission
#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Finney and Kearny Counties, Kansas, to-wit:

> W/2 and SE/4 Section 1-24S-36W, Kearny County, Kansas. NE/4 Section 25 and W/2 Section 35, NW/4 Section 28, E/2 Section 34-25S-32W, the Arkansas River in Section 14, the N/2 Section 14 lying south of the AT&SF Railroad, Lots 1 and 2 and N/2 SW/4 and SE/4 NE/4 SE/4 Section 14 and the Arkansas River in Section 15,

and a 5-acre tract in the SE/c NE/4, Lot 4 and NE/4 SE/4, and a 10-acre tract south of the railroad right-of-way on the east side of the NE/4, Lots 5 and 6; all in Section 15-24S-33W, and the W/2 Section 22-26S-32W, Finney County, Kansas.

and to substitute therefor the following described acreage situated in Finney, Kearny, Seward, and Stanton Counties, Kansas, to-wit:

S/2 Section 13-28S-40W and the S/2 Section 27-29S-40W, Stanton County, Kansas. The N/2 NE/4 and W/2 Section 1-24S-34W and the SE/4 Section 27 and the E/2 Section 29-25S-32W and the NW/4 Section 8 and S/2 NW/4 Section 20-23S-33W, Finney County, Kansas. The E/2 Section 16-32S-33W, Seward County, Kansas. The NE/4 Section 24-23S-36W, and the SE/4 Section 30-23S-35W, Kearny County, Kansas.

NOW THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 16 day of October, 1951.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
V. G. Hill
Attorney-in-Fact

Approved—HOL

ATTEST:

/s/ A. W. LEWAN
Secretary

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

[fol. 404]
STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 16 day of October, 1951, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ DENTON S. HOWARD
Notary Public

My commission expires:
March 8, 1955

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public in and for said state, on this 26th day of October, 1951, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 405]

EXHIBIT A-22

FPC Gas Rate
Schedule No. 84
Supplement No. 22
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 09 AM '54
Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Kearny County, Kansas, to-wit:

NE/4 Section 26-24S-37W; SE/4 Section 2 26S-37W; Lot 2 and NE/4 SW/4 Section 8-25S-37W.

and to substitute therefor the following described acreage situated in Kearny County, Kansas, to-wit:

The W/2 Section 3-26S-38W.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above-described, and Buyer hereby approves said substitution.

DATED, This 25th day of October, 1951.

STANOLIND OIL AND GAS COMPANY

By: /s/ V. G. HILL
V. G. Hill
Its Attorney-in-Fact

Approved—NS, EMC

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD
Vice-President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[fol. 406]
STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 25th day of October, 1951, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires:
July 21, 1953

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, in and for said State, on this 5th day of November, 1951, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 407]

EXHIBIT A-23

FPC Gas Rate
Schedule No. 84
Supplement No. 23
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 09 AM '54
Federal Power Commission

#18,196

AGREEMENT

THIS AGREEMENT, Made and entered into this 19 day of Feb., 1952, by and among STANOLIND OIL AND GAS COMPANY, a Delaware corporation, hereinafter sometimes referred to as "Stanolind", CITIES SERVICE GAS COMPANY, a Delaware corporation, hereinafter sometimes referred to as "Cities Service", and JOHN B. HAWLEY, JR., hereinafter sometimes referred to as "Hawley",

WITNESSETH: That,

WHEREAS, Stanolind and Cities Service have entered into a Gas Purchase Contract, dated June 23, 1950, in which

Stanolind is the "Seller" and Cities Service is the "Buyer", said contract being hereinafter referred to as the "Gas Contract", and

WHEREAS, Stanolind has committed to the terms of said Gas Contract the following described Oil and Gas Lease:

> Oil and Gas Lease, dated August 1, 1944, between John A. Watson and Lilah Watson, his wife, as Lessors, and Joe E. Denham, as Lessee, covering the following described property, to-wit:
>
> > West Half ($W\frac{1}{2}$) of Section Twenty-eight (28), Township Thirty (30) South, Range Thirty-two (32) West, Haskell County, Kansas,
>
> which said lease was recorded in the office of the Register of Deeds in and for said County and State in Book 5 at page 227,

which said lease is hereinafter referred to as the "Watson lease", and

WHEREAS, Hawley is the owner of the lessee's interest in the two (2) following described Oil and Gas Leases:

> Oil and Gas Lease, dated December 5, 1956, between Melvin Norby and Ethel Norby, his wife, as Lessors, and The Cooperative Refinery Association, as Lessee, covering the following described property, to-wit:
>
> > Southwest Quarter ($SW\frac{1}{4}$) of Section Thirty-two (32), Township Thirty one (31) South, Range Thirty-three (33) West, Seward County, Kansas,
>
> which said lease was recorded in the office of the Register of Deeds in and for said County and State in Book 106 at page 127,

which said lease is hereinafter referred to as the "Norby lease", and

> Oil and Gas Lease, dated July 16, 1951, between Wm. P. Elliott, as Trustee under the Last Will and Testament of Peter Hearn, Deceased, pursuant to Order of Probate Court of Meade County, Kansas, dated July 14, 1951, as Lessor, and Northern Ordnance, Incor-

porated, as Lessee, covering the following described property, to-wit:

[fol. 408] Lots Three (3) and Four (4), and South Half of Northwest Quarter ($S\frac{1}{2}$ $NW\frac{1}{4}$), (being the Northwest Quarter ($NW\frac{1}{4}$) of Section Four (4), Township Thirty-two (32) South, Range Thirty-three (33) West, Seward County, Kansas,

which said lease was recorded in the office of the Register of Deeds in and for said County and State in Book 111 at Page 115,

which said lease is hereinafter referred to as the "Hearn lease", and

WHEREAS, the parties hereto desire to release the Watson lease from the terms and conditions of the said Gas Contract and commit in lieu thereof the Norby and Hearn leases to the terms of said contract;

NOW, THEREFORE, in consideration of the mutual covenants hereof and of the dedication by Hawley of additional gas reserves to Cities Service requirements, it is hereby mutually agreed by and between the parties hereto as follows:

1. Cities Service and Stanolind hereby release the Watson lease above described from all the terms and conditions of the Gas Contract.

2. Hawley hereby agrees to unitize the Norby lease with other leases now owned or which may hereafter be acquired by Stanolind in Section Thirty-two (32), Township Thirty-one (31) South, Range Thirty-three (33) West, Seward County, Kansas, and to unitize the Hearn lease with other leases now owned or which may hereafter be acquired by Stanolind in Section Four (4), Township Thirty-two (32) South, Range Thirty-three (33) West, Seward County, Kansas, and that the natural gas produced from said Norby and Hearn leases above described shall be sold to Cities Service under the terms and provisions of the said Gas Contract as fully and effectively as if said leases had been included in Exhibit "A" contained in said Gas Contract on the effective date thereof, and Hawley hereby agrees to be

bound as a "Seller" by the terms and provisions of said Gas Contract in so far as said terms and provisions may be applicable to the said Norby and Hearn leases.

3. Cities Service agrees to purchase the natural gas produced from the Norby and Hearn leases in accordance with all the terms and provisions of the said Gas Contract and agrees to be bound as "Buyer" by all the terms and provisions of said Gas Contract in so far as they apply to the said Norby and Hearn leases.

4. It is understood and agreed that Stanolind will be the operator of any unit of which said Norby and Hearn leases [fol. 409] are a part and that payments for the gas purchased from said Norby and Hearn leases shall be made by Cities Service to Stanolind together with payments for gas purchased from Stanolind in said unit, and that Stanolind hereby agrees to make payment to the owners of all working interests in said unit and all royalties thereunder and to hold Cities Service harmless from any claims of any owners of the working interests or royalty interests in said unit by reason of such payment.

This agreement shall be binding upon the heirs, representatives, successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have executed this agreement as of the day and year first above written.

Stanolind Oil and Gas Company

By /s/ V. G. Hill
Its Attorney-in-Fact

Approved—MD, HOL, EMC

Cities Service Gas Company

By /s/ Geo. H. Baird
Vice President

/s/ John B. Hawley, Jr.
John B. Hawley, Jr.

Attest:

/s/ A. W. Levan
Asst. Secretary

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 29 day of February, 1952, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires:
July 21, 1955

[fol. 410]

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 19th day of Feb., 1952, personally appeared GEO. H. BAIRD, to me known to be the identical person who executed the within and foregoing instrument as Vice President of CITIES SERVICE GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of CITIES SERVICE GAS COMPANY, a corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

BE IT REMEMBERED, that on this 5th day of April, 1952, before me, a Notary Public in and for said County and State, personally appeared JOHN B. HAWLEY, JR., who is personally known to me, and known to me to be the same person who executed the foregoing instrument, and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

/s/ WILLIAM (Illegible)
Notary Public

My Commission Expires:
Notary Public, State of Florida at large
My commission expires Mar. 30, 1956
Bonded by American Surety Co. of N. Y.

[fol. 411]

EXHIBIT A-24

FPC Gas Rate
Schedule No. 84
Supplement No. 24
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16, 5 10 AM '54
Federal Power Commission

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Finney and Kearny Counties, Kansas, to-wit:

The Northwest Quarter (NW/4) Section Eighteen (18), Township Twenty-four South (T24S), Range

Thirty-seven West (R37W), Kearny County, Kansas, and the North Half (N/2) of the Northeast Quarter (NE/4) and the West Half (W/2) Section One (1), Township Twenty-four South (T24S), Range Thirty-four West (R34W), Finney County, Kansas,

and to substitute therefor the following described acreage situated in Seward County, Kansas, to-wit:

The Northwest Quarter (NW/4) Section Twenty-eight (28), Township Thirty-one South (T31S), Range Thirty-three West (R33W), Seward County, Kansas.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer, as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, this 11th day of April, 1952.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. H.
Its Attorney in Fact

Approved—DNM, NS, EMC

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[fol. 412]

Received
Nov 16 5 10 AM '54
Federal Power Commission

STATE OF OKLAHOMA)
) ss
COUNTY OF OKLAHOMA)

Before me, a Notary Public within and for said County and State, on this 11th day of April, 1952, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney in Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires
July 21, 1953

STATE OF OKLAHOMA)
) ss
COUNTY OF OKLAHOMA)

Before me, a Notary Public in and for said County and State, on this (Illegible) day of (Illegible), 1952, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ (Illegible)
Notary Public

My commission expires

(Illegible)

[fol. 413]

EXHIBIT A-25

FPC Gas Rate
Schedule No. 84
Supplement No. 25
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 10 AM '54
Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Kearny County, Kansas, to-wit:

> The East Half (E/2) of Section Four (4), Township Twenty-four South (T24S), Range Thirty-seven West (R37W).

and to substitute therefor the following described acreage situated in Kearny County, Kansas, to-wit:

> The North Half (N/2) Section Five (5), Township Twenty-four South (T24S), Range Thirty-seven West (R37W).

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last

above described and Buyer hereby approves said substitution.

DATED, This 6 day of May, 1952.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
V. G. Hill, Attorney-in-Fact

Approved—EMC, NS

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice-President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[fol. 414]
STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 6 day of May, 1952, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact, of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires:
7-21-53

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public in and for said State, on this 8th day of May, 1952, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice-President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires: 2/25/54

[fol. 415]

EXHIBIT A-26

FPC Gas Rate
Schedule No. 84
Supplement No. 26
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 10 AM '54
Federal Power Commission

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Finney County, Kansas, to-wit:

> All that part of Section 1-25S-33W, Finney County, Kansas, lying East of U.S. Highway No. 83 as now located, containing 200 acres more or less.

and to substitute therefor the following described acreage situated in Seward County, Kansas, to-wit:

The NW/4 of Section 32-31S-33W.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 27th day of June, 1952.

STANOLIND OIL AND GAS COMPANY

By /s/ V. H. HILL
V. H. Hill, Attorney-in-Fact

Approved—EMC, NS

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[fol. 416]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 27th day of June, 1952, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he

executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commision expires: July 21, 1953

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public in and for said state, on this 7th day of July, 1952, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice-President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 417]

EXHIBIT A-27

FPC Gas Rate
Schedule No. 84
Supplement No. 27
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 10 AM '54
Federal Power Commission

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Kearny County, Kansas, to-wit:

The SE/4 and the NW/4 of Section 23-23S-37W

and to substitute therefor the following described acreage situated in Kearny County, Kansas, to-wit:

The NW/4 Section 22 and the NW/4 Section 27-23S-37W

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 17 day of July, 1952.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
V. G. Hill, Attorney-in-Fact

Approved—RGW, DEC, HOL

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice-President

ATTEST:

/s/ W. R. MORTON
Secretary

18196

[fol. 418]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 17 day of July, 1952, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires: 7-21-53

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public in and for said State, on this 24th day of July, 1952, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice-President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 419]

EXHIBIT A-28

JPM:sh 7/22/52

FPC Gas Rate
Schedule No. 84
Supplement No. 28
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 10 AM '54
Federal Power Commission

AGREEMENT TO DEDICATE RESERVES

WHEREAS, STANOLIND OIL AND GAS COMPANY is the owner of the following described oil and gas leases covering land situate in Kearny County, Kansas, to-wit:

Lease No. 78824-C

Dated:	January 23, 1952
Filed:	February 20, 1952
Recorded:	Book 21 at Page 280
Lessors:	Mrs. L. E. Duncan, et vir E. E.
Lessee:	Stanolind Oil and Gas Company

Lease No. 78824-D

Dated:	February 26, 1952
Filed:	March 6, 1952
Recorded:	Book 21 at Page 591
Lessors:	B. C. Messenger, et vir I. E.
Lessee:	Stanolind Oil and Gas Company;

and,

WHEREAS, the land covered by said leases, situate in said County and State, is described as follows, to-wit:

The Northeast Quarter (NE/4) of Section Thirty-One (31), Township Twenty-Five South (T25S), Range Thirty-Seven West (R37W);

and,

WHEREAS, under the provisions of Article IV, Dedication, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to dedicate to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the above described lands acquired by Seller under the leases above set forth.

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants herein contained, Seller hereby dedicates to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands above described acquired by Seller under the leases above set forth, and Buyer approves and accepts said dedication.

DATED, this 25 day of July, 1952.

STANOLIND OIL AND GAS COMPANY

By /s/ K. W. BOLT
Attorney in Fact

Approved- COD, EMC, DEM

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice-President

[fol. 420]

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 25th day of July, 1952, personally appeared K. W. BOLT, to me known to be the identical person who executed the within and foregoing instrument as Attorney in Fact of STANOLIND OIL AND GAS COMPANY, a corporation; and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ HELEN E. MOISES
Notary Public

My commission expires:
August 22, 1953

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 30th day of July, 1952, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President, and duly acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 421]

EXHIBIT A-29

JPM:sh 9/9/52

FPC Gas Rate
Schedule No. 84
Supplement No. 29
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 10 AM '54
Federal Power Commission

AGREEMENT TO DEDICATE RESERVES

WHEREAS, STANOLIND OIL AND GAS COMPANY is the owner of the following described oil and gas lease covering land situate in Kearny County, Kansas, to-wit:

Lease No. 128537

Dated: July 30, 1952
Lessors: Carl B. Bentrup, et ux
Mereedes J.
Lessee: Stanolind Oil and Gas Company

and,

WHEREAS, the land covered by said lease, situate in said County and State, is described as follows, to-wit:

A tract of land 28 rods East and West by 17 1/17 rods North and South in the Southwest corner of the E/2 SW/4, it being the intention to cover all the lessors' interest in Section 8-T24S-R35W;

and

WHEREAS, under the provisions of Article IV, Dedication, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to dedicate to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the above described lands acquired by Seller under the lease above set forth.

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants herein contained, Seller hereby dedicates to the fulfillment and performance of said agreement

all of Seller's dedicated reserves under the lands above described acquired by Seller under the lease above set forth, and Buyer approves and accepts said dedication.

DATED, this 12 day of November, 1952.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
Attorney in Fact

Approved—FFD, and 3 sets of illegible initials.

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice-President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

18196

[fol. 422]

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 12 day of November, 1952, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney in Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires: July 21, 1953

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 13th day of November, 1952, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY, to the foregoing instrument as its Vice President, and duly acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 423]

EXHIBIT A-30

3/10/53 EOL:sh

FPC Gas Rate
Schedule No. 84
Supplement No. 30
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 10 AM '54
Federal Power Commission

RELEASE FROM DEDICATION

WHEREAS, STANOLIND OIL AND GAS COMPANY, a corporation, hereinafter referred to as "Stanolind," and CITIES SERVICE GAS COMPANY, a corporation, hereinafter referred to as "Cities Service," entered into a certain Gas Purchase Contract on the 23d day of June, 1950, wherein Stanolind, subject to the terms, covenants and conditions thereof, agreed to sell, and Cities Service agreed to buy, all of the natural gas produced and saved from leases owned by

Stanolind covering lands described in Exhibit "A," attached to such contract and made a part thereof; and,

WHEREAS, Stanolind and Cities Service entered into a certain Gas Processing Agreement on the 23d day of June, 1950, wherein Cities Service, subject to the terms, covenants and conditions thereof, agreed to deliver all natural gas purchased from Stanolind under the Gas Purchase Contract described in the last preceding paragraph, in so far as such natural gas was or may be produced from Areas "A" and "B" described in Exhibit "A," attached to said Gas Processing Agreement and made a part thereof, to Stanolind for processing at its gasoline plant located in Section 5, Township 29 South, Range 38 West, Grant County, Kansas; and

WHEREAS, the following described lease, covering land situated in Kearny County, State of Kansas, was committed and dedicated to said Gas Purchase Contract and said Gas Processing Agreement, to-wit:

Lessor:	The Garden City Company
Lessee:	Joe E. Denham
Date:	June 1, 1943
Recorded:	Book 10, at Page 219

in so far, and only in so far, as said lease covers the following described land in said County and State, to-wit:

> A tract of land in Northwest Quarter (NW¼) of Section 24, Township 24 South, Range 35 West, beginning at the northwest corner of Section 24, Township 24 South, Range 35 West. Thence east twenty feet, thence South twenty feet to the beginning of this survey, thence east and along south line of highway 350 feet, thence South and parallel to Section line 623.8 feet, thence South 38 degrees 15′ west 552.4 feet to east line of highway, thence north along said east line of highway 1066.4 feet to the place of beginning and containing 6.83 acres.

[fol. 424] WHEREAS, it is the desire of the parties hereto that said lease, in so far as it covers the land above

described, shall be released from the terms, covenants and conditions of said Gas Purchase Contract and said Gas *Processing* ~~Purchasing~~ Agreement to the same extent as though it had been specifically excepted in each of said contracts.

Now, Therefore, in consideration of the premises and other good and valuable considerations, the receipt and the sufficiency of which are hereby acknowledged by each of the parties hereto, Stanolind and Cities Service do hereby agree that the oil and gas lease above described, in so far as such lease covers the land above described, shall be, and is hereby, released from all the terms, covenants and conditions of said Gas Purchase Contract and said Gas Processing Agreement to the same extent as though said lease had been specifically excepted in each of said contracts.

It is agreed and understood that this "Release from Dedication" shall not apply to lands subject to said lease other than those specifically above described.

In Witness Whereof, this instrument is executed as of this 16th day of March, 1953.

Stanolind Oil and Gas Company

By /s/ V. G. Hill
Its Attorney in Fact

Approved—HOL, EMC

Cities Service Gas Company

By /s/ Geo. H. Baird
Vice President

Attest:

/s/ A. W. Levan
Asst. Secretary

DATED, This 25th day of May, 1953.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
V. G. Hill
Its Attorney-in-Fact

Approved—HOL, RGW

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

18196

[fol. 427]
STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 25th day of May, 1953, personally appeared V. G. Hill, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires:
7-21-53

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public in and for said State, on this 2nd day of June, 1953, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 428]

EXHIBIT A-32

FPC Gas Rate
Schedule No. 84
Supplement No. 32
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 10 AM '54
Federal Power Commission

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Kearny County, Kansas, to-wit:

N/2 Section 26-23S-37W

and to substitute therefor the following described acreage situated in Kearny County, Kansas, to-wit:

NE/4 Section 14-23S-36W

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 28th day of May, 1953.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
V. G. Hill
Attorney-in-Fact

Approved—HOL

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Secretary

[fol. 429]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 28th day of May, 1953, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires:
July 21, 1953

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public in and for said State, on this (illegible) day of (illegible), 1953, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 425]

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 16th day of March, 1953, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney in Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires: July 21, 1953

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 25th day of March, 1953, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President, and duly acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ ROSEMARY BERNEY
Notary Public

My commision expires:
Feb. 25, 1954

[fol. 426]

EXHIBIT A-31

FPC Gas Rate
Schedule No. 84
Supplement No. 31
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 10 AM '54
Federal Power Commission

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Finney County, Kansas, to-wit:

SW/4 Section 6-23S-32W

and to substitute therefor the following described acreage situated in Finney County, Kansas, to-wit:

NE/4 Section 1-23S-33W

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

[fol. 430].

EXHIBIT A-33

FPC Gas Rate
Schedule No. 84
Supplement No. 33
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 10 AM '54
Federal Power Commission

RELEASE

WHEREAS, in accordance with the provisions of Article IV, Sub-Section 3 of Gas Purchase Contract (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller did on May 6, 1953, tender to Buyer the oil and gas leases described in Exhibit "A" hereto attached and hereof made a part insofar as said leases cover Seller's gas rights in and to the gas producing zones at depths above sea level, and Buyer does not desire to accept assignment of said leases.

NOW, THEREFORE, in consideration of the premises, Cities Service Gas Company does hereby release and quitclaim all its rights to such assignment and releases said oil and gas leases from the terms of said Gas Purchase Contract the same as though said leases had not been scheduled and dedicated thereunder.

DATED, This day of , 1953.

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD
Vice President

Attest:

/s/ W. R. MORTON
Secretary

STATE OF KANSAS
COUNTY OF

Before me, ROSEMARY BERNEY, a Notary Public in and for said County and State, on this 8 day of June, 1953, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its President and acknowledged to me, that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My Commission Expires:
Feb. 25, 1954

18196

[fol. 431]

LEASE SCHEDULE

EXHIBIT "A" PAGE ONE — STATE OF KANSAS — COUNTY OF STANTON

AFE 4239
mc 5-20-53

Lease No.	Lessor	Lessee	Date	Description	Recorded Book	Recorded Page
48602	Fred H. Staker, et ux	Joe E. Denham	7-17-43	SE/4 Sec. 3-30S-40W.	3	82
48670	Justin Jones, et ux	Joe E. Denham	7-13-43	Insofar as the lease covers and affects: NE/4 Sec. 33-29S-40W.	3	98
48768	George J. Peppercorn	Joe E. Denham	7-27-43	W/2 Sec. 3-30S-40W.	3	121
50030	F. E. Plummer, et ux	Joe E. Denham	7-14-43	Insofar as the lease covers and affects: NE/4 Sec. 3-30S-40W.	3	257

Received
Nov 16 5 10 AM '54
Federal Power Commission

[fol. 432]

EXHIBIT A-34

FPC Gas Rate
Schedule No. 84
Supplement No. 34
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

#18196

[Emblem]

CITIES SERVICE GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY 1, OKLAHOMA

June 8, 1953

Stanolind Oil and Gas Company
P. O. Box 1654
Oklahoma City, Oklahoma

Gentlemen: Attn: Mr. E. W. Cook

This will acknowledge receipt of your letters of May 12, 14 and 15, tendering Cities Service Gas Company acreage, as listed below, in the Kansas Hugoton Field all in accordance with the terms of Paragraph 3, Article 4 of our Gas Purchase Contract dated June 23, 1950:

Lease No.	Description
48736	SW/4 Sec. 15-29S-33W
49972	NW/4 Sec. 15-29S-33W
48590	SE/4 Sec. 4-31S-40W
48421	NE/4 Sec. 14-29S-40W
48911	SW/4 Sec. 26-29S-40W
49867	SE/4 Sec. 26-29S-40W
50999	SE/4 Sec. 35-29S-40W
48742	SW/4 Sec. 35-29S-40W
49868	N/2 Sec. 26-29S-40W
48598	SE/4 Sec. 14-29S-40W
48839	NW/4 Sec. 14-29S-40W
67827	SE & S/2 NE 6-26S-31W

76901	SW/4 Sec. 26-28S-32W
76902	NW/4 Sec. 26-28S-32W
76851	NE/4 Sec. 35-28S-32W
76852	SW/4 Sec. 35-28S-32W
76853	NW/4 Sec. 35-28S-32W
76859	SE/4 Sec. 26-28S-32W
76860	NE/4 Sec. 26-28S-32W
76868	SE/4 Sec. 35-28S-32W
76899	S/2 Sec. 6-28S-32W
77438	N/2 Sec. 6-28S-32W
76861	NE/4 Sec. 34-28S-32W

We do not wish assignment of this acreage and therefore do hereby release it from the terms of our contract.

Yours very truly,

CITIES SERVICE GAS COMPANY

/s/ GEO. H. BAIRD
Geo. H. Baird, Vice President

GHB/RWH/c

[fol. 433]

EXHIBIT A-35

FPC Gas Rate
Schedule No. 84
Supplement No. 35
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

#18196

STANOLIND OIL AND GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY, OKLAHOMA

June 9, 1953

Re: AFE-4239
31 South - 40 West
Morton County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Geo. C. Roth

Gentlemen:

In accordance with Paragraph 3, Article 4, of Gas Purchase Contract dated June 23, 1950, we wish to offer to you assignment of the following leases:

Lease No.	Description	Expiration Date
49317	N/2 Section 5-31S-40W	7-20-53
48549	SW/4 Section 5-31S-40W	7-22-53
48938	SE/4 Section 5-31S-40W	7-20-53
48825	NW/4 Section 6-31S-40W	7-20-53
48593	NE/4 Section 6-31S-40W	7-20-53
48933	SE/4 Section 6-31S-40W	7-16-53
55491	SW/4 Section 6-31S-40W	3-17-54
79084	W/2 Section 7-31S-40W	7-16-53
49737	SE/4 Section 7-31S-40W	7-19-53
59015	W/2 NE/4 Section 7-31S-40W	6-10-54
49736	E/2 NE/4 Section 7-31S-40W	9- 1-53
48450	NE/4 Section 8-31S-40W	7-14-53

49974	NW/4 Section 8-31S-40W	7-20-53
48583	SW/4 Section 8-31S-40W	7-20-53
49676	SE/4 Section 8-31S-40W	8-28-53

You will note that the leases described above (the majority of which expire in July, 1953) were among the group which you allowed Stanolind until June 20, 1953 in which to offer said leases to you, as described in our letter of May 13, 1953.

If you wish assignment of these leases in accordance with the above mentioned contract, please advise and we will have the necessary instrument prepared and executed. If [fol. 434] you do not desire said assignments, kindly indicate in the space provided below and return a copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ E. W. COOK
E. W. Cook
Division Landman

RGW:oh

We do not wish assignment of the above leases and hereby release said leases from the terms of said Gas Purchase Contract, the same as though said leases had not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice Pres.

[fol. 435]

EXHIBIT A-36

FPC Gas Rate
Schedule No. 84
Supplement No. 36
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

#18,196

[Emblem]

CITIES SERVICE GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY 1, OKLAHOMA

June 9, 1953

Stanolind Oil and Gas Company
P. O. Box 591
Tulsa 2, Oklahoma

Gentlemen:

Pursuant to discussions and correspondence between representatives of our respective companies, we desire to arrange for closing the individual well measurement accounts each month with the weekly charts removed during the seven (7) day period ending the twenty-second day of each calendar month.

Our reasons for desiring such change have been fully explained in discussions with your representatives and it is our belief that the change suggested should eliminate delays heretofore experienced in getting information to you.

Under our proposed plan certain charts will be changed on Monday and certain other charts on Tuesday, etc., to and including Friday of each week. Our chart routes will be established so that, except for unforeseen contingencies, the charts from any individual meter will be removed the same day of each week.

We, therefore, propose that paragraph 6 of Article II, Definitions, of the Gas Purchase Contract dated June 23, 1950, be amended to read as follows:

Fiscal accounting month shall mean that period of time beginning with the "on date" of the last chart placed on a meter within seven days prior to the 23rd day of each calendar month and shall end with the "off date" of the last chart removed from that meter within seven days prior to the 23rd day of the next succeeding calendar month. Except for the unforeseen contingencies charts shall be removed from a meter on the same day of each week.

If the foregoing amendment is satisfactory to you, please so indicate by signing and returning to us two (2) copies of this letter, whereupon said contract shall be deemed to be so amended.

Yours very truly,

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

AMENDMENT AGREED TO:

STANOLIND OIL AND GAS COMPANY

By /s/ FRANK LINDEMAN, JR.
Vice President

FILE COPY

VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 80

PAN AMERICAN PETROLEUM CORPORATION,
PETITIONER,

—*vs.*—

SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY, ET AL.

No. 81

TEXACO, INC., PETITIONER,

—*vs.*—

SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY, ET AL.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

PETITIONS FOR CERTIORARI FILED MAY 6, 1960
CERTIORARI GRANTED JUNE 13, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 80

PAN AMERICAN PETROLEUM CORPORATION,
PETITIONER,

—vs.—

SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY, ET AL.

No. 81

TEXACO, INC., PETITIONER,

—vs.—

SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY, ET AL.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., JANUARY 23, 1961

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[fol. 436]

EXHIBIT A-37

FPC Gas Rate
Schedule No. 84
Supplement No. 37
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

18196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY; as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Kearny County, Kansas, to-wit:

> Northeast Quarter (NE/4) Section Ten (10), Township Twenty Three South (T23S), Range Thirty Seven West (R37W).

and to substitute therefor the following described acreage situated in Kearny County, Kansas, to-wit:

> An undivided one-half (½) interest in the Southeast Quarter (SE/4) Section Twenty One (21), Township Twenty Four South (T24S), Range Thirty Seven West (R37W).

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

> Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.
>
> Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last

above described, and Buyer hereby approves said substitution.

DATED, This 19 day of June, 1953.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
V. G. Hill, Attorney-in-Fact

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[fol. 437]
STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, M. J. HITCHCOCK, a Notary Public, within and for said County and State, on this 19 day of June, 1953, personally appeared V. G. Hill, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires: 7-21-53

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before me, ROSEMARY BERNEY, a Notary Public in and for said state, on this 25th day of June, 1953, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foreging instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness where I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 438]

EXHIBIT A-38

FPC Gas Rate
Schedule No. 84
Supplement No. 38
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

18196

[Emblem]

CITIES SERVICE GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY 1, OKLAHOMA

June 26, 1953

Stanolind Oil and Gas Company
P. O. Box 1654
Oklahoma City, Oklahoma

Attention: E. W. Cook, Division Landman

Gentlemen:

This will acknowledge receipt of your letter of June 3, 1953, tendering the following acreage to us under the terms

and conditions of Paragraph 3, Article 4 of our Gas Purchase Contract dated June 23, 1950:

Lease No.	Description	Expiration Date
76870	S/2 Section 18-27S-32W	8- 1-53
49520	SE/4 Section 13-31S-41W	8-11-53
50071	SE/4 Section 33-30S-40W	8-11-53
48522	N/2 NE/4 NE/4 Sec. 12-24S-33W	7-13-53
48685	E/2 SW/4 SW/4 Sec. 12-24S-33W	7-21-53
49507	South 48 acres of E/2 NW/4 Section 12-24S-33W	8-30-53
76871	SE/4 Section 5-28S-32W	8- 1-53

We do not wish assignment of the above leases and hereby release said leases from the terms of said Gas Purchase Contract, the same as though these leases had not been scheduled and decicated to us.

Yours very truly,

CITIES SERVICE GAS COMPANY

/s/ GEO. H. BAIRD
Geo. H. Baird, Vice President

RWH/c

[fol. 439]

EXHIBIT A-39

FPC Gas Rate
Schedule No. 84
Supplement No. 39
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

18196

STANOLIND OIL AND GAS COMPANY
Oklahoma City, Oklahoma

June 26, 1953

Re: AFE 4239
Contract 18196
Finney County
Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Geo. C. Roth

Gentlemen:

In accordance with Paragraph 3, Article 4, of Gas Purchase Contract dated June 23, 1950, we wish to offer to you assignment of the following leases:

Lease No. 48520	W/2 SW/4 SW/4 & SW/4 NW/4 SW/4 Section 12-24S-33W	Exp. 7/19/53
Lease No. 48761	South 10 acres of North 20.5 acres of NW/4 SW/4 Section 12-24S-33W	Exp. 7/20/53
Lease No. 49506	All that part of E/2 NW/4 Section 12-24S-33W lying North of irrigation lateral—30-1/2 acres	Exp. 7/20/53

As discussed with Mr. Hofsess, we allowed John B. Hawley, Jr., to whom we had previously farmed out acreage in Sections 11 and 12-24S-33W, to form an irregular unit and attribute acreage in Section 12 to the unit well in Section 11. Hawley has now advised that he will only require approximately 65 acres out of Section 12 and it is our intention to forfeit the remaining acreage in said section.

If you wish assignment of these leases in accordance with the above mentioned Contract, please advise and we will have the necessary instrument prepared and executed. If you do not desire said assignment, kindly indicate in the space provided below and return copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ E. W. COOK
E. W. Cook
Division Landman

cc: GEO. C. MOHOFFY
F. F. DIWOKY
D. N. MITCHELL
ROW: (illegible)

We do not wish assignment of the above leases and hereby release said leases from the terms of said Gas Purchase Contract the same as though said leases have not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD

COPY

[fol. 440]

EXHIBIT A-40

FPC Gas Rate
Schedule No. 84
Supplement No. 40
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Stanton County, Kansas to-wit:

SW/4 Section 18-27S-39W

and to substitute therefor the following described acreage situated in Stanton County, Kansas, to-wit:

SW/4 Section 13-27S-40W

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 7th day of July, 1953.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
V. G. Hill, Attorney-in-Fact

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

Approved—(Illegible)

ATTEST:

A. W. LEVAN
Asst. Secretary

[fol. 441]
STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 7th day of July, 1953, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires:
July 21, 1953

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, ROSEMARY BERNEY, a Notary Public in and for said State, on this 14th day of July, 1953, personally

appeared GEO H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice-President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

18196

[fol. 442]

EXHIBIT A-41

FPC Gas Rate
Schedule No. 84
Supplement No. 41
Filing Date: 11-16-54
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

18196

[Emblem]

CITIES SERVICE GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY 1, OKLAHOMA

July 7, 1953

Stanolind Oil and Gas Company
P. O. Box 1654
Oklahoma City, Oklahoma

Attention: E. W. Cook, Division Landman

Gentlemen:

This will acknowledge receipt of your letter of June 12 in which you tendered us the following acreage, all in ac-

cordance with Paragraph 3, Article 4 of our Gas Purchase Contract dated June 23, 1950:

Lease No.	Description	Expiration Date
48593	NE/4 Section 1-31S-41W	7/20/53
79086	NW/4 Section 19-31S-40W	7/14/53
79085	NE/4 Section 19-31S-40W	7/14/53
50914	SW/4 Section 19-31S-40W	3/21/54
79104	W/2 Section 6-32S-40W	7/31/53
48454	NE/4 & N/2 SE/4 6-32S-40W	7/16/53
48903	S/2 SE/4 Sec. 6-32S-40W	7/20/53

You now advise that you were able to farmout the acreage in Section 19-31S-40W and Section 6-32S-40W and therefore desire to withdraw your tender of this acreage. We are agreeable to your withdrawal of the tender of the acreage in Sections 19-31S-40W and 6-32S-40W and shall consider this acreage to remain dedicated to us under the terms of our Gas Purchase Contract dated June 23, 1950.

We do not wish assignment of the lease covering the NE/4 of Section 1-31S-41W and hereby release said lease from the terms of said gas purchase contract, the same as though it had not been scheduled and dedicated to us.

Yours very truly,

CITIES SERVICE GAS COMPANY

/s/ GEO. H. BAIRD
Geo. H. Baird, Vice President

GHB/REB/c

[fol. 443]

EXHIBIT A-42

HOL/mld 6/29/53

FPC Gas Rate
Schedule No. 84
Supplement No. 42
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

STATE OF KANSAS)
) ss.
COUNTY OF KEARNY)

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS:

That, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt and the sufficiency of which are hereby acknowledged, STANOLIND OIL AND GAS COMPANY, a corporation (hereinafter referred to as "Assignor") hereby does bargain, sell, assign, transfer and convey unto KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., a corporation, its successors and assigns (hereinafter referred to as "Assignee"), without warranty of title express or implied, all of its right, title and interest in and to the following described oil and gas lease, covering land situated in the County of Kearny, State of Kansas, to-wit:

Lessor:	Georgia Menn and Roy E. Menn, Executors and Trustees of the Estate of E. R. Thorpe, Deceased
Lessee:	Joe E. Denham
Date:	July 27, 1944
Recorded:	Book 11, at Page 454;

in so far as said lease covers the oil and gas rights in all horizons from the surface to a depth of 3,200 feet lying in and under the following described land in said County and State, to-wit:

The North Half (N½) of Section Twenty-six (26), Township Twenty-three South (T23S), Range Thirty-seven West (R37W)

(said lease and land above described, to the extent that said lease covers the oil and gas rights in all horizons from the surface to a depth of 3,200 feet lying in and under said land, hereinafter sometimes being referred to as the "lease acreage"), subject to the following terms, covenants and conditions:

1. In addition to any and all other overriding royalties, production payments and other encumbrances to which said [fol. 444] lease acreage may be subject, the Assignor hereby excepts and reserves unto itself, its successors and assigns, the following overriding royalty:

(a) One-fourth of Seven-eighths (¼ of ⅞) of all oil, distillate, condensate and other liquid hydrocarbons produced and saved from all horizons from the surface to a depth of 3,200 feet lying in and under the land above described, which shall be delivered free of all cost and expense, except taxes on production, at the well or wells on said land or, at the Assignor's option, to the credit of the Assignor into the pipe line to which said well or wells may be connected; and

(b) One-fourth of Seven-eighths (¼ of ⅞) of all gas and casinghead gas produced and saved from all horizons from the surface to a depth of 3,200 feet lying in and under the land above described, the market value (at the well) of which shall be paid to the Assignor free of all cost and expense, except taxes on production.

3. With respect to the overriding royalty herein excepted and reserved by the Assignor, the Assignor and the Assignee agree, as follows:

(a) That said overriding royalty shall extend to any extension or renewal of the lease above described.

(b) That oil and gas used in drilling operations on said lease acreage and in the handling of production

therefrom shall be deducted before said overriding royalty is computed.

(c) That the Assignee shall furnish to the Assignor authentic itemized monthly reports of all production from said lease acreage, such reports to be mailed not later than the fifteenth day of the month following that for which the report is made.

(d) That in the event the above described lease covers less than all the oil and gas mineral rights in and to all horizons from the surface to a depth of 3,200 feet lying in and under the land above described, said overriding royalty, in so far as it pertains to oil, distillate, condensate and other liquid hydrocarbons, gas and casinghead gas produced and saved from said [fol. 445] horizons lying in and under said land, shall be proportionately reduced so as to be equal to that proportion of one-fourth of seven-eighths (¼ of ⅞) of said production from said horizons which the interest in and to said oil and gas mineral rights in all horizons from the surface to a depth of 3,200 feet lying in and under the land above described and covered by said lease bears to the full and undivided oil and gas mineral estate therein.

To Have and to Hold said lease acreage unto the Assignee, its successors and assigns, subject to the terms, covenants and conditions hereinabove set forth.

Executed this 8th day of July, 1953.

Stanolind Oil and Gas Company

By /s/ V. G. Hill
Its Attorney in Fact

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 8th day of July, 1953, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney in Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires:
7-21-53

18196

[fol. 446]

EXHIBIT A-43

FPC Gas Rate
Schedule No. 84
Supplement No. 43
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

RELEASE

WHEREAS, in accordance with the provisions of Article IV, Sub-Section 3 of Gas Purchase Contract (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller did on May 18, 1953, tender to Buyer the oil and gas leases described in Exhibit "A" hereto attached and hereof made a part insofar as said leases cover Seller's gas rights in and to the gas producing

zones at depths above sea level, and Buyer does not desire to accept assignment of said leases.

NOW, THEREFORE, in consideration of the premises, Cities Service Gas Company does hereby release and quitclaim all its rights to such assignment and releases said oil and gas leases from the terms of said Gas Purchase Contract the same as though said leases had not been scheduled and dedicated thereunder.

DATED, this 14th day of July, 1953.

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before me, the undersigned, a Notary Public in and for said County and State, on this 14th day of July, 1953, personally Appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My Commission Expires:
Feb. 25, 1954

18196

[fol. 447]

LEASE SCHEDULE

EXHIBIT "A" PAGE ONE — STATE OF KANSAS — COUNTY OF MORTON

Lease No.	Lessor	Lessee	Date	Description	Recorded Book	Recorded Page
49520	Floyd Breeding et ux	Joe E. Denham	8-11-43	Insofar as said lease covers and affects the N/2 and SE/4 Section 18-31S-40W	11	11
50851	Mary Shale	Joe E. Denham	7-21-43	SW/4 Section 18-31S-40W	11	50

Received
Nov 16 5 11 AM '54
Federal Power Commission

416

18196

[fol. 448]

EXHIBIT A-44

FPC Gas Rate
Schedule No. 84
Supplement No. 44
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

July 17, 1953

Re: AFE-4239
Contract No. 18196
Morton County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Geo. C. Roth

Gentlemen:

In accordance with Paragraph 3, Article 4, of Gas Purchase Contract dated June 23, 1950, we wish to offer to you assignment of Lease No. 49913, covering the SE/4 Section 30-31S-40W, Morton County, Kansas. Said lease is due to expire September 16, 1953.

If you wish assignment of this lease in accordance with the above mentioned contract, please advise and we will have the necessary instrument prepared and executed. If you do not desire assignment, kindly so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ E. W. Cook
E. W. Cook
Division Landman

RGW:oh

We do not wish assignment of the above lease and hereby release said lease from the terms of said Gas Purchase Contract, the same as though said lease had not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD

cc: MOHOFFY
MITCHELL
DIWOKY
McCABE

COPY

[fol. 449]

EXHIBIT A-45

FPC Gas Rate
Schedule No. 84
Supplement No. 45
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

18196

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

P. O. Box 1654
July 27, 1953

File: KWB-90

Subject: Standard Gas Measurement Order
Kansas Corporation Commission

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Gentlemen:

This will acknowledge your letter of July 17, 1953 on the above subject. You have advised us that you propose currently to make payment for gas, pending final judicial

interpretation of said order with reference to court actions now instituted, at the price and upon the pressure base provided in said contracts. You have stated that when the next payment is made you will advise us that the same is made to and accepted by us without prejudice to the rights of either of us pending the hearing and final determination of such litigation.

We are willing to accept current payments on the basis you propose except that we do not desire to make advance commitment to be bound by a suit to which we are not a party and which may not be submitted to the court of last resort. We are willing to accept payments on the contract basis upon the understanding and condition that settlements so made shall apply on account and shall be without prejudice to our rights to claim and litigate against you for settlements on the basis of the increased volumes resulting from the new measurement basis and that you will not claim or plead any estoppel or final settlement by reason of acceptance of payments by us on said contract basis.

If the above stated conditions are agreeable to you, will you please so indicate by signing this letter in the space provided below and returning one copy to us.

Yours very truly,

/s/ K. W. Bolt
K. W. Bolt,
Division Production Superintendent

Accepted this 30 day
of July, 1953.

Cities Service Gas Company

By /s/ Geo. H. Baird
Vice President

COPY

[fol. 450]

EXHIBIT A-46

FPC Gas Rate
Schedule No. 84
Supplement No. 46
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

18196

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

August 7, 1953

Re: AFE-4239
Hugoton Field Area
Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Geo. C. Roth

Gentlemen:

Under the terms of Paragraph 3, Article 4, of Gas Purchase Contract dated June 23, 1950, we wish to offer to you assignment of the following lease in Finney County, Kansas:

Lease No.	Description	Expiration Date
50206	S/2 NE/4 NE/4 Section 12-24S-33W	10-9-53

If you wish assignment of this lease in accordance with the above mentioned contract, please advise and we will have the necessary instrument prepared and executed. If you do not wish said assignment, kindly so indicate in the space provided below and return a signed copy to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ E. W. COOK
E. W. Cook
Division Landman

RGW:oh

We do not wish assignment of the above lease and hereby release said lease from the terms of said Gas Purchase Contract the same as though said lease had not been scheduled and dedicated thereto.

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD

cc: GEO. C. MOHOFFY
F. F. DIWOKY
D. N. MITCHELL
S. S. MCCABE

COPY

[fol. 451]

EXHIBIT A-47

HOL/bd 9/8/53

FPC Gas Rate
Schedule No. 84
Supplement No. 47
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

RELEASE

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, Stanolind Oil and Gas Company, as "Seller", and Cities Service Gas Company, as "Buyer", entered into a certain contract on the 23rd day of June, 1950, wherein, subject to the terms, covenants and conditions thereof, Seller agreed to sell and Buyer agreed to buy the natural gas produced and saved under the following described oil and gas lease, covering land situated in the County of Finney, State of Kansas, to-wit:

Lessor:	Ed Boots, et ux
Lessee:	Joe E. Denham
Date:	March 7, 1944
Recorded:	Book 13, at Page 162

said lease covering the following described land in said County and State, to-wit:

> The East Half (E/2) of the Southwest Quarter (SW/4) of Section Twelve (12), Township Twenty-four South (T24S), Range Thirty-three West (R33W),

together with other leases; and,

WHEREAS, it is the desire of the parties hereto that the oil and gas lease above described be released from the terms, covenants and conditions of said contract.

NOW, THEREFORE, in consideration of the premises and other good and valuable considerations, the receipt and the sufficiency of which are hereby acknowledged, Stanolind Oil and Gas Company, a corporation, and Cities Service Gas Company, a corporation, do hereby covenant and agree that the above described oil and gas lease shall be, and is hereby, released from all the terms, covenants and conditions of said contract, the same as though it had never been subject thereto.

[fol. 452] IN WITNESS WHEREOF, this instrument is executed as of this 9th day of September, 1953.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
Its Attorney in Fact

(Stamp)

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH
Vice President

18196

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 9th day of September, 1953, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney in Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ MARY WRIGHT
Notary Public

My commission expires: July 16, 1957

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 10th day of September, 1953, personally appeared GEO. C. ROTH, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President, and duly acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ ROSEMARY BERNEY
Notary Public

(SEAL)

My commission expires:
Feb. 25, 1954

[fol. 453]

EXHIBIT A-49

FPC Gas Rate
Schedule No. 84
Supplement No. 48
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Haskell County, Kansas, to-wit:

Lease No. 47483:

Lessor:	Roy Batmen, et al
Lessee:	Joe E. Denham
Date:	April 20, 1943
Description:	NE/4 Section 10-28S-33W
Recorded:	Book 3, Page 629

and to substitute therefor the following described acreage situated in Morton County, Kansas, to-wit:

Lease No. 49910:

Lessor:	N. E. Melencamp, et ux
Lessee:	Joe E. Denham
Date:	September 16, 1943
Description:	SE/4 Section 30-31S-40W
Recorded:	Book 11, Page 23

Lease No. 128608:

Lessor:	Estelle E. Smith, et al
Lessee:	J. D. Long
Date:	March 20, 1953
Description:	SE/4 Section 19-31S-40W
Recorded:	Book 17, Page 357

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement [fol. 454] all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution, with said substitution to become operative and effective at 7:00 A. M. on the 23rd day of November, 1953.

DATED, This 27th day of October, 1953.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
Its Attorney in Fact

Approved (Illegible)

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 27th day of October, 1953, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ JOAN MILLER
Notary Public

My commission expires:

My Commission Expires July 16, 1957

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public in and for said State, on this 2nd day of November, 1953, personally appeared G. C. ROTH, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public
18196

My commission expires:

Feb. 25, 1954

[fol. 455]

EXHIBIT A-48

FPC Gas Rate
Schedule No. 84
Supplement No. 49
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

November 4, 1953

Re: AFE-4239
Contract No. 18196
Kearny County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Geo. C. Roth

Gentlemen:

In accordance with Paragraph 3, Article 4, of Gas Purchase Contract, dated June 23, 1950, we wish to offer to you assignment of Lease No. 72061-A, covering the NE/4 Section 12-22S-37W, Kearny County, Kansas, which is due to expire January 1, 1954.

If you wish assignment of this lease in accordance with the above mentioned contract, please advise and we will have the necessary instrument prepared and executed. If you do not wish assignment, kindly so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ E. W. Cook
E. W. Cook
Division Landman

RGW:oh

We do not wish assignment of the above lease and hereby release said lease from the terms of said Gas Purchase Contract, the same as though said lease had not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

cc: GEO. C. MOHOFFY
D. N. MITCHELL
F. F. DIWOKY
S. B. MCCABE

COPY

[fol. 456]

EXHIBIT A-50

FPC Gas Rate
Schedule No. 84
Supplement No. 50
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Hamilton County, Kansas, to-wit:

Lease No. 74859
N/2 Section 13-25S-39W.

and to substitute therefor the following described acreage situated in Kearny County, Kansas, to-wit:

Lease No. 135155
NE/4 Section 11-24S-37W.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 19th day of November, 1953.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
V. G. Hill, Attorney-in-Fact

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

18,196

[fol. 457]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, JOAN MILLER, a Notary Public, within and for said County and State, on this 19th day of November, 1953, personally appeared V. G. Hill, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

We do not wish assignment of the above lease and hereby release said lease from the terms of said Gas Purchase Contract, the same as though said lease had not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

COPY

[fol. 462]

EXHIBIT A-53

FPC Gas Rate
Schedule No. 84
Supplement No. 53
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

January 8, 1954

Re: AFE-4239
Contract No. 18196
Stanton County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Geo. C. Roth

Gentlemen:

In accordance with Paragraph 3, Article 4, of Gas Purchase Contract dated June 23, 1950, we wish to offer to you assignment of Lease No. 75394 covering the SW/4 Section 14 and Lease No. 55493 covering the N/2 Section 35-29S-40W, Stanton County, Kansas, which are due to expire in March, 1954.

If you wish assignment of these leases in accordance with the above mentioned contract, please advise and we will have the necessary instrument prepared and executed.

If you do not wish assigment, kindly so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ E. W. COOK
E. W. Cook
Division Landman

RGW:oh

We do not wish assignment of the above leases and hereby release said leases from the terms of said Gas Purchase Contract, the same as though said leases had not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

COPY

[fol. 463]

EXHIBIT A-54

FPC Gas Rate
Schedule No. 84
Supplement No. 54
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

January 20, 1954

Re: AFE-4239
Contract No. 18196
Stanton and Morton Counties
Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Geo. C. Roth

Gentlemen:

In accordance with Paragraph 3, Article 4, of Gas Purchase Contract dated June 23, 1950, we wish to offer to you

assignment of Lease Nos. 54354 and 54355, covering the NE/4 of Section 33-30S-40W, and Lease No. 54935, covering the NE/4 and SW/4 Section 4-31S-40W, Stanton and Morton Counties, Kansas, which are due to expire in March, 1954.

If you wish assignment of these leases in accordance with the above mentioned contract, please advise and we will have the necessary instrument prepared and executed. If you do not wish assignment, kindly so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ E. W. COOK
E. W. Cook
Division Landman

RGW:oh

We do not wish assignment of the above leases and hereby release said leases from the terms of said Gas Purchase Contract, the same as though said leases had not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

COPY

[fol. 464]

EXHIBIT A-55

FPC Gas Rate
Schedule No. 84
Supplement No. 55
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

February 8, 1954

Re: AFE-4239—
Contract No. 18196
Haskell County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russell W. Hofsess

Gentlemen:

In accordance with Paragraph 3, Article 4, of Gas Purchase Contract dated June 23, 1950, we wish to offer to you assignment of Lease No. 77396, covering the NW/4 Section 5-28S-32W, Haskell County, Kansas, which is due to expire April 24, 1954.

If you wish assignment of this lease in accordance with the above mentioned contract, please advise and we will have the necessary instrument prepared and executed. If you do not wish assignment, kindly so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

Original signed by
By /s/ E. W. COOK
E. W. Cook
Division Landman

RGW:oh

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ JOAN MILLER
Notary Public

My commission expires:
My Commission Expires July 16, 1957

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before me, HELEN LACER, a Notary Public in and for said state, on this 7th day of December, 1953, personally appeared G. C. ROTH, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ HELEN LACER
Notary Public

My commission expires:
May 22, 1955

18,196

[fol. 458]

EXHIBIT A-51

NS/hr—11/25/53

FPC Gas Rate
Schedule No. 84
Supplement No. 51
Filing Date:
Effective Date: Accepted

Received
Nov 16 5 11 AM '54
Federal Power Commission

RELEASE

WHEREAS, the gas rights in and to gas producing zones at depths above sea level in the oil and gas leases described on Exhibit "A" hereto attached and hereof made a part, are dedicated under the terms of Gas Purchase Contract between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, and said parties have mutually agreed to release said oil and gas leases from dedication and the terms of said Gas Purchase Contract.

NOW, THEREFORE, it is hereby agreed by and between the undersigned that said oil and gas leases and leasehold estates described in said Exhibit "A" hereto be, and the same are, hereby released from the terms of said Gas Purchase Contract the same as though said leases had not been scheduled and dedicated thereunder.

DATED, This 30th day of November, 1953.

CITIES SERVICE GAS COMPANY

By: /s/ G. C. ROTH
Vice President

STANOLIND OIL AND GAS COMPANY

By: /s/ V. G. HILL
Attorney-in-Fact

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before me, HELEN LACER, a Notary Public in and for said County and State, on this 7th day of December, 1953, personally appeared G. C. ROTH, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ HELEN LACER
Notary Public

My Commission Expires:
May 22, 1955

18,196

[fol. 459]

LEASE SCHEDULE

EXHIBIT "A" PAGE ONE — STATE OF KANSAS — COUNTY OF KEARNY

Lease No.	Lessor	Lessee	Date	Description	Recorded Book	Recorded Page
128461	Jacob B. Graber et ux	C. E. Beymer	11/21/46	NW/4 Section 5-24S-37W	14	588
128460	Jacob B. Graber et ux	C. E. Beymer	5/15/45	NE/4 Section 5-24S-37W	13	66
76917	Fred Collingwood et ux	Ethel K. McCormick	1-/22/46	S/2 Section 5-24S-37W	13	390
61709	Maude B. Hefner et al	Joe E. Denham	8/15/44	NW/4 Section 34-23S-37W	12	23
64794	Imon G. Wiatt et al	Stanolind Oil and Gas Company	2/15/45	SW/4 Section 34-23S-37W	12	337
76823	J. A. Sauer et ux	Ethel K. McCormick	4/13/46	SW/4 Section 27-23S-37W	13	576
81873	Darwin Salyer et al	C. E. Beymer	11/11/46	S/2 NE/4 Section 34-23S-37W	14	609

Received
Nov 16 5 12 AM '54
Federal Power Commission
18,196

[fol. 460]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before me, MARY WRIGHT, a Notary Public, within and for said County and State, on this 30th day of November, 1953, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ MARY WRIGHT
Notary Public

My Commission Expires:
July 16, 1957

[fol. 461]

EXHIBIT A-52

FPC Gas Rate
Schedule No. 84
Supplement No. 52
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

December 9, 1953

Re: AFE-4239
Contract No. 18196
Kearny County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Geo. C. Roth

Gentlemen:

In accordance with Paragraph 3, Article 4, of Gas Purchase Contract dated June 23, 1950, we wish to offer to you assignment of Lease No. 65586, covering the NE/4 Section 22-29S-40W, Kearny County, Kansas, which is due to expire January 25, 1954.

If you wish assignment of this lease in accordance with the above mentioned contract, please advise and we will have the necessary instrument prepared and executed. If you do not wish assignment, kindly so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ E. W. COOK
E. W. Cook
Division Landman

RGW:oh

We do not wish assignment of the above lease and hereby release said lease from the terms of said Gas Purchase Contract, the same as though said lease had not been scheduled and dedicated thereunder.

ACCEPTED, This 17 day
of February, 1954

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

[fol. 465]

EXHIBIT A-56

FPC Gas Rate
Schedule No. 84
Supplement No. 56
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder in so far as the same cover the following described lands situated in Kearny County, Kansas, to-wit:

> Northeast Quarter (NE/4) Section Nine (9), Township Twenty-four South (T24S), Range Thirty-eight West (R38W).

and to substitute therefor the following described acreage situated in Kearny County, Kansas, to-wit:

> Northwest Quarter (NW/4) Section Three (3), Township Twenty-four South (T24S), Range Thirty-eight West (R38W).

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract in so far as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 15th day of February, 1954.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
Attorney-in-Fact

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[fol. 466]

18196

Received
Nov 16 5 12 AM '54
Federal Power Commission

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 15th day of February, 1954, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me

that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ JOAN MILLER
Notary Public

My commission expires:
My Commission Expires July 16, 1957

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public in and for said State, on this 18th day of February, 1954, personally appeared G. C. ROTH, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires: 2/25/54

[fol. 467]

EXHIBIT A-57

FPC Gas Rate
Schedule No. 84
Supplement No. 57
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

March 4, 1954

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Re: AFE-4239
Contract No. 18196
Kearny County, Kansas

Attention: Mr. Russell W. Hofsess

Gentlemen:

In accordance with Paragraph 3, Article 4, of Gas Purchase Contract dated June 23, 1950, we wish to offer to you assignment of Lease No. 60380 "A", "B" and "C", covering the N/2 Section 36-22S-37W, Kearny County, Kansas.

It is our intention to forfeit a 1/4 interest in the NW/4 Section 36 by non-payment of the April 27, 1954 rental. It is to be noted, however, that a full interest in the NE/4 and a 1/2 interest in the NW/4 expire July 29, 1954, and a 1/4 interest in the NW/4 expires November 18, 1954.

If you wish assignment of this lease in accordance with the above mentioned contract, please advise and we will have the necessary instrument prepared and executed. If you do not wish assignment, kindly so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ E. W. COOK
E. W. Cook
Division Landman

RGW:oh

We do not wish assignment of the above lease and hereby release said lease from the terms of said Gas Purchase Contract, the same as though said lease had not been scheduled and dedicated thereunder.

ACCEPTED, This 20 day
of April, 1954

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

COPY

[fol. 468]

EXHIBIT A-58

FPC Gas Rate
Schedule No. 84
Supplement No. 58
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

March 12, 1954

Re: AFE-4239
Contract No. 18196
Kearny County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russell W. Hofsess

Gentlemen:

In accordance with Paragraph 3, Article 4, of Gas Purchase Contract dated June 23, 1950, we wish to offer to you

assignment of Lease No. 61487, covering all of Section 35-22S-37W, Kearny County, Kansas. This lease is scheduled to expire 7-28-54; however, we have recently completed a non-commercial well on said Section 35 and are planning to assign the lease to the lessor in order that he may use what gas is produced from the well for irrigation purposes.

If you wish assignment of this lease in accordance with the above mentioned contract, please advise and we will have the necessary instrument prepared and executed. If you do not wish assignment, kindly so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ E. W. COOK
E. W. Cook
Division Landman

RGW:oh

We do not wish assignment of the above lease and hereby release said lease from the terms of said Gas Purchase Contract the same as though said lease had not been scheduled and dedicated thereunder.

ACCEPTED, This 12 day
of March, 1954

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

COPY

[fol. 469]

EXHIBIT A-59

FPC Gas Rate
Schedule No. 84
Supplement No. 59
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

April 2, 1954

Re: AFE 4239
Contract 18,196
Stanton County
Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hofsess

Gentlemen:

Under date of February 8, 1954, we tendered to you assignment of Lease No. 55493, covering the N/2 Section 35-29S-40W, which was due to expire in March, 1954, and under date of January 20, 1954, we tendered to you an assignment of our Lease No. 54355, covering the NE/4 Section 33-30S-40W, which was also due to expire in March, 1954. You subsequently advised that you did not desire to accept the assignment of said leases and released same from the terms of our Contract dated June 23, 1950.

We have since consummated a farmout deal with Petroleum, Inc. and Hugoton Pay wells are being drilled on each of these sections. Consequently, it is our desire to rededicate this acreage to the terms of our Contract dated June 23, 1950, since at the time the leases were tendered to you, we did not believe that a farmout deal could be consummated. In the event you desire to accept the dedication of these leases under the terms of the above mentioned Con-

tract, kindly so indicate in the space provided below and return one copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ E. W. COOK
E. W. Cook
Division Landman

RGW:mw

ACCEPTED, this 4 day of
April, 1954

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

COPY

[fol. 470]

EXHIBIT A-60

FPC Gas Rate
Schedule No. 84
Supplement No. 60
Filing Date: 11-16-54
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA.

April 27, 1954

Re: AFE 17 388
AFE 4239
Contract 18,196
Kearny County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hofsess

Gentlemen:

Under the terms of Paragraph 3, Article 4, of Gas Purchase Contract dated June 23, 1950, we are obligated to offer

you assignment of the following leases sixty days prior to their respective expiration dates, should we elect to allow such leases to expire by nondevelopment:

21 South, 36 West

Section 34	Lease No. 62270	SW/4	Exp. 7/29/54
	Lease No. 60064	SE/4	Exp. 7/29/54
Section 35	Lease No. 60375	NE/4	Exp. 7/27/54
	Lease No. 60382-A	NW/4	Exp. 7/28/54
	Lease No. 60561	SW/4	Exp. 7/27/54
Section 36	Lease No. 60373	NW/4	Exp. 7/27/54
	Lease No. 60374	SW/4	Exp. 7/27/54

22 South, 36 West

Section 1	Lease No. 60430	NE/4	Exp. 7/27/54
	Lease No. 60555	NW/4	Exp. 7/27/54
Section 3	Lease No. 59948	NE/4 W/2 &	Exp. 7/28/54
	Lease No. 60421	SE/4	Exp. 7/28/54
Section 4	Lease No. 61008	NE/4	Exp. 7/27/54
	Lease No. 60362	SE/4	Exp. 7/31/54
	Lease No. 65842	SW/4 NE/4 &	Exp. 8/3/54
Section 8	Lease No. 60311-A	NW/4	Exp. 7/27/54
	Lease No. 61465-A	SE/4	Exp. 7/28/54
Section 9	Lease No. 60363	NW/4	Exp. 7/31/54
Section 27	Lease No. 61453	All	Exp. 7/28/54
Section 28	Lease No. 61489	SW/4	Exp. 7/27/54
	Lease No. 65841	NW/4	Exp. 8/3/54
Section 29	Lease No. 60857	E/2	Exp. 7/27/54
Section 31	Lease No. 61013	SE/4	Exp. 7/27/54
	Lease No. 61014	SW/4	Exp. 7/27/54
	Lease No. 65840	NE/4	Exp. 7/31/54
	Lease No. 65838	NW/4	Exp. 7/28/54

[fol. 471]

22 South, 37 West

Section 36	Lease No. 60380-A	N/2	Exp. 7/29/54
	Lease No. 60380-B	N/2	Exp. 9/18/54
	Lease No. 60380-C	N/2	Exp. 4/27/55
	Lease No. 59937	SE/4	Exp. 7/27/54

23 South, 37 West

Section 1	Lease No. 61710	N/2	Exp. 7/28/54
	Lease No. 60016	S/2	Exp. 7/27/54

22 South, 36 West

Section 16	Lease No. 61012	N/2 & SW	Exp. 7/27/54
	Lease No. 61464	SE/4	Exp. 7/27/54
Section 17	Lease No. 60592	NW/4	Exp. 7/27/54
	Lease No. 60620	SW/4	Exp. 7/27/54
Section 18	Lease No. 61005	NE/4 W/2	Exp. 7/27/54
	Lease No. 61007	NW/4	Exp. 7/27/54
	Lease No. 61482	SE/4	Exp. 7/27/54

Stanolind has consummated a farmout of the above acreage with Petroleum, Inc., under the terms of which they are obligated to drill a Hugoton Pay well in Section 1 and 27-22S-36W and the outcome of which will determine their additional development plans as to the remaining acreage.

In view of the above, and confirming your telephone conversation with Mr. Woodard of April 23rd, it is respectfully requested that Stanolind be allowed until July 1, 1954 in which to offer to you the leases above described, should we elect so to do.

In the event you are agreeable to the above, kindly indicate your acceptance thereof in the space provided below

and return a copy of this letter to this office at your earliest convenience.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

Original signed by
By J. P. WARDEN
J. P. Warden
Division Landman

RGW:mw

ACCEPTED, this 5 day of
May, 1954

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

COPY

[fol. 472]

EXHIBIT A-61

FPC Gas Rate
Schedule No. 84
Supplement No. 61
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

May 14, 1954

Re: AFE 4239
AFE 17,520
Contract 18,196
Stanton County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hofsess

Gentlemen:

Under the terms of Paragraph 3, of Article 4, of Gas Purchase Contract dated June 23, 1950, we are obligated

to offer you assignment of the following leases sixty days prior to the respective expiration dates should we elect to allow such leases to expire by nondevelopment:

Lease No. 61541	NW/4 Section 33-28S-40W	Exp. 7/31/54
Lease No. 61540	NE/4 Section 33-28S-40W	Exp. 7/31/54
Lease No. 61537	SW/4 Section 33-28S-40W	Exp. 7/31/54
Lease No. 61532	SE/4 Section 33-28S-40W	Exp. 8/1/54

Stanolind has recommended to its Management the drilling of a Hugoton well in Section 28-28S-40W, and we desire to await the outcome of this well before determining whether or not to drill in Section 33 or allow the leases therein to expire.

In view of the above, it is respectfully requested that Stanolind be allowed until July 1, 1954 in which to offer to you the leases above described, should we elect to do so.

In the event you are agreeable to the above, kindly indicate your acceptance thereof in the space provided below and return copy of this letter to this office at your earliest convenience.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

Original signed by
By J. P. WARDEN
J. P. Warden
Division Landman

RGW:mw

ACCEPTED, this 18 day of
May, 1954

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

COPY

[fol. 473]

EXHIBIT A-62

FPC Gas Rate
Schedule No. 84
Supplement No. 62
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

May 19, 1954

Re: AFE 17,467
AFE 4239
Contract 18196
Kearny County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hofsess

Gentlemen:

Under the terms of Paragraph 3, of Article 4, of Gas Purchase Contract dated June 23, 1950, we are obligated to offer you assignment of the following leases sixty days prior to the respective expiration dates should we elect to allow such leases to expire by nondevelopment:

Township 21 South, Range 35 West

Lease No. 60852	NE/4 Section 21	Exp. 8/9/54
Lease No. 61670	NE/4 Section 22	Exp. 7/28/54
Lease No. 60572	E/2 SE/4 Section 22	Exp. 8/11/54
Lease No. 61004	NW/4 Section 23	Exp. 7/27/54
Lease No. 60552-A	NE/4 Section 23	Exp. 7/27/54
Lease No. 60552-B	NE/4 Section 23	Exp. 9/18/54
Lease No. 60552-C	NE/4 Section 23	Exp. 9/18/54
Lease No. 61458	SE/4 Section 23	Exp. 7/29/54
Lease No. 60321	N/2 Section 24	Exp. 7/27/54

Lease No. 60381	NE/4 Section 27	Exp. 7/27/54
Lease No. 61459	NW/4 Section 27	Exp. 7/27/54
Lease No. 61706	SW/4 Section 27	Exp. 7/31/54
Lease No. 61712	SE/4 Section 27	Exp. 7/27/54
Lease No. 61010	SE/4 Section 28	Exp. 7/27/54
Lease No. 60381	N/2 Section 28	Exp. 7/27/54
Lease No. 60581	NW/4 Section 32	Exp. 7/27/54
Lease No. 60378	SE/4 Section 32	Exp. 7/27/54
Lease No. 61484	NW/4 Section 35	Exp. 7/27/54
Lease No. 60571	NE/4 Section 35	Exp. 7/27/54
Lease No. 60556	SE/4 Section 35	Exp. 7/27/54
Lease No. 62613	NW/4 Section 36	Exp. 7/27/54

Stanolind has consummated a farmout of the above acreage with Mr. N. Appleman, under the terms of which Appleman is obligated to drill a Hugoton Pay well in either Section 27 or 28-21S-35W, Kearny County, Kansas, the outcome of which will determine additional development plans as to the remaining acreage.

[fol. 474]

In view of the above, it is respectfully requested that Stanolind be allowed until July 1, 1954 within which to offer to you the leases above described, should we elect to do so.

In the event you are agreeable to the above, kindly indicate your acceptance thereof in the space provided below and return copy of this letter to this office at your earliest convenience.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

Original signed by
By J. P. WARDEN
J. P. Warden
Division Landman

JEH:mw

ACCEPTED, this 26 day of
May, 1954

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

COPY

[fol. 475]

EXHIBIT A-63

FPC Gas Rate
Schedule No. 84
Supplement No. 63
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

May 19, 1954

Re: AFE-4239
Contract No. 18196
Kearny County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russell W. Hofsess

Gentlemen:

In accordance with Paragraph 3, Article 4, of Gas Purchase Contract dated June 23, 1950, we wish to offer to you assignment of the following leases all in 22S-37W, Kearny County, Kansas, the majority of which expire in July, 1954:

Lease No.	Description	Expiration Date
59980	NE/4 Section 34-22S-37W	7-27-54
60013	SW/4 Section 26-22S-37W	7-27-54
60320	NE/4 Section 27-22S-37W	7-27-54
60420	NE/4 Section 26-22S-37W	7-27-54
60424	NW/4 Section 24-22S-37W	7-27-54
60570	S/2 NE/4 Section 3-22S-37W	7-27-54
60591	NW/4 Section 34-22S-37W	7-27-54
60593	SW/4 Section 27-22S-37W	7-27-54
61012	Insofar as covers SE/4 Section 11-22S-37W	7-27-54
61714 A&B	NE/4 Section 14-228-37W	7-27-54
60057	NE/4 Section 26-22S-37W	7-27-54
60314	NE/4 Section 24-22S-37W	7-28-54
60315	NW/4 Section 2-22S-37W	7-28-54
60426	SW/4 Section 14-22S-37W	7-28-54
60429	NE/4 Section 2-22S-37W	7-28-54
60584	SE/4 Section 3-22S-37W	7-28-54
60587	W/2 Section 25-22S-37W	7-28-54
60587	SW/4 Section 24-22S-37W	7-28-54
61596	NW/4 Section 21-22S-37W	7-28-54
61597	W/2 Section 16-22S-37W	7-28-54
61668	SE/4 Section 27-22S-37W	7-28-54
60309	SE/4 Section 15, N/2 Section 22-22S-37W	7-29-54
60316	W/2 Section 15-22S-37W	7-29-54
60317	NE/4 Section 10-22S-37W	7-29-54
60318	S/2 Section 2-22S-37W	7-29-54
60425	S/2 Section 1-22S-37W	7-29-54
60428	W/2 and SE/4 Section 10-22S-37W	7-29-54

[fol. 476]

60579	NW/4 Section 23-22S-37W	7-29-54
60583	NW/4 Section 11-22S-37W	7-29-54
60586	S/2 Section 12-22S-37W	7-29-54
61595	NE/4 Section 1-22S-37W	7-29-54
61602	NW/4 Section 3-22S-37W	7-29-54
59979	NE/4 Section 25-22S-37W	7-28-54

Lease No.	Description	Expiration Date
60860	NE/4 Section 23-22S-37W	7-27-54
60861	SW/4 Section 23-22S-37W	7-27-54
60862	SE/4 Section 23-22S-37W	7-27-54
63047	NE/4 Section 11-22S-37W	11-10-54
63960	SW/4 Section 11-22S-37W	12-6-54
72124	NW/4 Section 14-22S-37W	2-14-56
67856	SE/4 Section 22-22S-37W	7-20-55
61708	E/2 SE/4 Section 34-22S-37W	9-7-54
63208	NW/4 Section 1-22S-37W	10-30-54

If you wish assignment of these leases in accordance with the above mentioned contract, please advise and we will have the necessary instrument prepared and executed. If you do not wish assignments, kindly so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

Original signed by
By J. P. WARDEN
J. P. Warden
Division Landman

JEH:oh

We do not wish assignment of the above leases and hereby release said leases from the terms of said Gas Purchase Contract, the same as though said leases had not been scheduled and dedicated thereunder.

ACCEPTED, This 26 day
of May, 1954

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

COPY

[fol. 477]

EXHIBIT A-64

FPC Gas Rate
Schedule No. 84
Supplement No. 64
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

June 7, 1954

Re: AFE 17,520
AFE 4239
Contract 18,196
Stanton County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hofsess

Gentlemen:

Under the terms of Paragraph 3, of Article 4, of Gas Purchase Contract dated June 23, 1950, we are obligated to offer you assignment of the following leases sixty days prior to the respective expiration dates should we elect to allow such leases to expire by nondevelopment:

Township 29 South, Range 40 West

Lease No. 60051	SW/4 Section 4	Exp. 7/31/54
Lease No. 61698	SE/4 Section 4	Exp. 8/1/54
Lease No. 61702	N/3 & SE/4 Section 9	Exp. 8/1/54
Lease No. 60038	NW/4 Section 10	Exp. 8/1/54
Lease No. 60692	SE/4 Section 10	Exp. 8/1/54
Lease No. 60813	SW/4 Section 10	Exp. 8/11/54
Lease No. 61538	NE/4 Section 10	Exp. 8 1/54

We are endeavoring to consummate a farmout of the above acreage, and it is, therefore, respectfully requested that Stanolind be allowed until July 15, 1954 within which to offer to you the leases above described, should we elect to do so.

In the event you are agreeable to the above, kindly indicate your acceptance thereof in the space provided below and return copy of this letter to this office at your earliest convenience.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ J. P. WARDEN
J. P. Warden
Division Landman

JEH:mw

ACCEPTED, this 8 day of
June, 1954

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

COPY

[fol. 478]

EXHIBIT A-65

FPC Gas Rate
Schedule No. 84
Supplement No. 65
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

June 25, 1954

Re: AFE 4239
Contract 18,196
Finney County
Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hofsess

Gentlemen:

Under the terms of Paragraph 3, of Article 4, of Gas Purchase Contract dated June 23, 1950, we are obligated to offer you assignment of the following leases sixty days prior to the respective expiration dates should we elect to allow such leases to expire by nondevelopment:

Lease No. 61562	E/2 SW/2 Section 14-24S-32W	Exp. 8/26/54
Lease No. 61676	NW/4 Section 32-23S-32W	Exp. 8/29/54
Lease No. 61917	W/2 SW/4 Section 2-25S-32W	Exp. 8/29/54

In connection with the lease in Section 14-24S-32W, please be advised that are now attempting to negotiate deals for the drilling of wells in both Sections 10 and 16-24S-32W, and we are considering making a farmout whereby a well

will be drilled in Section 32-23S-32W. We are also attempting to work out a deal providing for the drilling of a well in Section 2-25S-32W. It is, therefore, respectfully requested that Stanolind be allowed until August 1, 1954 within which to offer to you the leases above described, should we so elect.

In the event you are agreeable to the above, kindly indicate your acceptance thereof in the space provided below and return copy of this letter to this office at your earliest convenience.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

Original signed by
By J. P. WARDEN
J. P. Warden
Division Landman

JEH:mw

ACCEPTED, this day of
, 1954

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

COPY

[fol. 479]

EXHIBIT A-66

FPC Gas Rate
Schedule No. 84
Supplement No. 66
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

June 25, 1954

Re: AFE 4239
Contract 18,196
Haskell County
Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hofsess

Gentlemen:

Under the terms of Paragraph 3, of Article 4, of Gas Purchase Contract dated June 23, 1950, we are obligated to offer you assignment of the following leases sixty days prior to the respective expiration dates, should we elect to allow such leases to expire by nondevelopment:

Lease No. 61664	SE/4 Section 23-27S-32W	Exp. 8/28/54
Lease No. 61902	NW/4 Section 23-27S-32W	Exp. 8/28/54

We are endeavoring to negotiate a deal whereby a test well will be drilled in Section 27-27S-32W, and, therefore, it is requested that we be granted an extension until August 1, 1954 in which to offer assignments to the leases described above, should we elect to do so.

In the event you are agreeable to the above, kindly indicate your acceptance thereof in the space provided below and return copy of this letter to this office at your earliest convenience.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

Original signed by
By J. P. WARDEN
J. P. Warden
Division Landman

JEH:mw

ACCEPTED, this 30th day of
(Illegible), 1954

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

COPY

[fol. 480]

EXHIBIT A-67

FPC Gas Rate
Schedule No. 84
Supplement No. 67
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

June 25, 1954

Re: AFE 4239
Contract 18,196
Kearny County
Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hofsess

Gentlemen:

In accordance with Paragraph 3, of Article 4, of Gas Purchase Contract dated June 23, 1950, we wish to offer to you assignment of the following lease:

Lease No. 61460 SW/4 Section 26-21S-35W Exp. 8/4/54

We recently drilled a dry hole in Section 26. If you wish assignment of the lease described above in accordance with the provisions of the above mentioned Contract, please advise and we will have the necessary instrument prepared and executed. If you do not wish an assignment, kindly so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

Original signed by
By J. P. WARDEN
J. P. Warden
Division Landman

JEH:mw

We do not wish assignment of the above lease and hereby release said lease from the terms of said Gas Purchase Contract, the same as though said lease had not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

Dated June 30, 1954

COPY

[fol. 481]

EXHIBIT A-68

FPC Gas Rate
Schedule No. 84
Supplement No. 68
Filing Date: Nov. 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

[Stamp—Received Jul 14 1954, Stanolind Oil and Gas Company, Oklahoma City, Okla.]

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

July 7, 1954

Re: AFE 17,530
AFE 4239
Contract 18,196
Stanton County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hofsess

Gentlemen:

We have been endeavoring to make a farmout deal covering the acreage embraced by the oil and gas leases listed below. However, it is apparent that this deal cannot be made and, therefore, in accordance with Paragraph 3 of Article 4 of Gas Purchase Contract dated June 23, 1950, we wish to offer to you assignment of the following leases:

Lease No.	Description	Expiration Date
60051	SW/4 Section 4-29S-40W	7/31/54
61698	SE/4 Section 4-29S-40W	8/1/54
61702	N/2 & SE/4 Section 9-29S-40W	8/1/54
60038	NW/4 Section 10-29S-40W	8/1/54
60693	SE/4 Section 10-29S-40W	8/3/54
60813	SW/4 Section 10-29S-40W	8/11/54
61535	NE/4 Section 10-29S-40W	8/1/54

If you wish assignment of the leases described above in accordance with the provisions of the above mentioned Contract, please advise and we will have the necessary instrument prepared and executed. If you do not wish an assignment, kindly so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ J. P. WARDEN
J. P. Warden
Division Landman

JEH:mw

We do not wish assignment of the above leases and hereby release said leases from the terms of said Gas Purchase Contract, the same as though said leases had not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

Dated July 9, 1954

COPY

[fol. 482]

EXHIBIT A-69

FPC Gas Rate
Schedule No. 84
Supplement No. 69
Filing Date: 11-16-54
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

[Received Jul 22 1954, Stanolind Oil and Gas Company, Oklahoma City, Okla.]

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

July 9, 1954

Re: AFE 20,327
AFE 4239
Contract 18,196
Stanton County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hofsess

Gentlemen:

In accordance with Paragraph 3 of Article 4 of Gas Purchase Contract dated June 23, 1950, we wish to offer to you assignment of the following leases:

29 South, 40 West

Lease No.	Description	Expiration Date
61542	All of Section 16	7/31/54
59959	W/2 Section 28	7/31/54
61913	SE/4 Section 28	8/9/54
61910	S/2 Section 29	8/3/54
60814	NE/4 Section 29	8/2/54
60043	NW/4 Section 32	8/2/54
61699	NE/4 Section 32	8/1/54
60690	SW/4 Section 32	8/1/54
60045	SE/4 Section 32	8/1/54

30 South, 40 West

Lease No.	Description	Expiration Date
60261-A	NW/4 Section 5	8/1/54
60261-B	NW/4 Section 5	8/1/54
60044	NE/4 Section 5	8/1/54
61696	S/2 Section 5	8/22/54
114046	NW/4 Section 8	12/11/54
61530	N/2 NE/4 & SW/4 NE/4 Section 8	8/3/54
60041	S/2 Section 8	7/31/54
60264	SE/4 NE/4 Section 8	8/1/54
60263-A	NW/4 Section 17	8/1/54
60263-B	NW/4 Section 17	8/1/54
60042	E/2 & SW/4 Section 17	7/31/54
[fol. 483]		
60270	N/2 Section 20	8/1/54
61690	SW/4 Section 20	8/2/54
59986	SE/4 Section 20	7/31/54
63890	NW/4 & E/2 SW/4, all minerals only to depth of 3400 feet, Section 32	8/15/54
61658	NE/4 Section 32	8/2/54

If you wish assignment of the leases described above, please advise and we will have the necessary instrument prepared and executed. If you do not wish an assignment, kindly so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ J. P. WARDEN
J. P. Warden
Division Landman

JEH:mw

We do not wish assignment of the above leases and hereby release said leases from the terms of said Gas Purchase Contract, the same as though said leases had not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

Dated 20 July 1954

COPY

[fol. 484]

EXHIBIT A-70

FPC Gas Rate
Schedule No. 84
Supplement No. 70
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

[Received Jul 22 1954, Stanolind Oil and Gas Company, Oklahoma City, Okla.]

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

July 9, 1954

Re: AFE 17,388
AFE 4239
Contract 18,196
Kearny County, Kansas.

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hofsess

Gentlemen:

By your acceptance of our letter of April 27, 1954, Cities Service granted an extension of the offering date for assignment of the leases set out therein, inasmuch as these leases were included in a farmout from Stanolind to Petroleum, Inc. Hugoton Pay wells were drilled in Sections 1 and 27-22S-36W and assignment of the acreage earned thereby has been delivered. Petroleum, Inc. has now relinquished its rights to the remaining acreage covered by this farmout, and in accordance with Paragraph 3 of Article 4 of Gas Purchase Contract dated June 23, 1950, we wish to offer to you assignment of the following leases:

Lease No.	Description	Expiration Date
	21 South, 36 West	
62270	SW/4 Section 34	7/29/54
60064	SE/4 Section 34	7/29/54
60375	NE/4 Section 35	7/27/54
60382-A	NW/4 Section 35	7/28/54
60561	SW/4 Section 35	7/27/54
	23 South, 36 West	
59948	NE/4 Section 3	7/28/54
60421	W/2 & SE/4 Section 3	7/28/54
61008	NE/4 Section 4	7/27/54
60362	SE/4 Section 4	7/31/54
65842	SW/4 Section 4	8/3/54
60311-A	N/2 Section 8	7/27/54
60311-B	NE/4 Section 8	7/27/54
61465-A	SE/4 Section 8	7/28/54
60363	NW/4 Section 9	7/31/54
61012	N/2 & SW/4 Section 16	7/27/54
61464	SE/4 Section 16	7/27/54
60592	NW/4 Section 17	7/27/54
[fol. 485]		
60620-A	SW/4 Section 17	7/27/54
60620-B	SW/4 Section 17	7/27/54
61086	NE/4 Section 18	7/27/54
68017	W/2 NW/4 Section 18	7/27/54
61482-A	SE/4 Section 18	7/27/54
61482-B	SE/4 Section 18	7/27/54
61482-C	SE/4 Section 18	7/27/54
61489	SW/4 Section 26	7/27/54
65841	NW/4 Section 28	8/3/54
60557	E/2 Section 28	7/27/54
61013	SE/4 Section 31	7/27/54
61014	SW/4 Section 31	7/27/54
65840	NE/4 Section 31	7/31/54
65838	NW/4 Section 31	7/28/54

Lease No.	Description	Expiration Date
	22 South, 37 West	
60380-A	NE/4 & NW/4 Section 36	7/29/54
60380-B	NW/4 Section 36	9/18/54
59937	SE/4 Section 36	7/27/54
	23 South, 37 West	
61710	N/1 Section 1	7/28/54
60016	S/2 Section 1	7/27/54

If you wish assignment of the leases described above, please advise and we will have the necessary instrument prepared and executed. If you do not wish an assignment, kindly so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ J. P. WARDEN
J. P. Warden
Division Landman

JEH:mw

We do not wish assignment of the above leases and hereby release said leases from the terms of said Gas Purchase Contract, the same as though said leases had not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

Dated 20 July 1954

COPY

[fol. 486]

EXHIBIT A-71

FPC Gas Rate
Schedule No. 84
Supplement No. 71
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 12 AM '54
Federal Power Commission

[Stamp—Received Aug 11 1954, Stanolind Oil and Gas Company, Oklahoma City, Okla.]

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

July 22, 1954

Re: AFE-4239
Contract No. 18,196
Finney & Kearny Counties
Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hofsess

Gentlemen:

We have been attempting to negotiate goals whereby we would in some cases either join other operators in the drilling of test wells or farmout acreage for the drilling of tests in the areas affecting our leases described below. Since we have been unsuccessful we hereby, pursuant to the terms of the Gas Purchase Contract, offer assignment of said leases to Cities Service Gas Company.

Finney County, Kansas
Lease No. 61562 E/2 SW Section 14-24S-32W 8/26/54

Kearny County, Kansas
Lease No. 61460 SW/4 Section 26-21S-35W 8/4/54

If you wish assignment of the leases described above, please advise and we will have the necessary instrument prepared and executed. If you do not wish an assignment, kindly so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ J. P. WARDEN
J. P. Warden
Division Landman

JEH/jm

We do not wish assignment of the above leases and hereby release said leases from the terms of said Gas Purchase Contract, dated June 23, 1950, the same as though said leases had not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

Dated *July 30, 1954*

COPY

[fol. 487]

EXHIBIT A-72

FPC Gas Rate
Schedule No. 84
Supplement No. 72
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 13 AM '54
Federal Power Commission

[Received Aug 17 1954, Stanolind Oil and Gas Company, Oklahoma City, Okla.]

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

August 3, 1954

Re: *AFE 4239*
Section 14-24S-32W
AFE 17,582
Section 32-23S-32W
AFE 17,591
Section 2-25S-32W
Contract 18,196
Finney County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hofsess

Gentlemen:

Under date of June 30, 1954, in response to our letter of June 25, 1954, you granted to us an extension to August 1, 1954 within which to offer assignment covering oil and gas leases as follows:

Lease No. 61562	E/2 SW Section 14-24S-32W	Exp. 8/26/54
Lease No. 61676	NW Section 32-23S-32W	Exp. 8/29/54
Lease No. 61917	W/2 SW Section 2-25S-32W	Exp. 8/29/54

In connection with Lease No. 61562, please be advised that we are continuing our effort to either arrange for the drilling of a well in Section 14-24S-32W or, in lieu thereof, we hope to renew said lease.

Under our AFE 17,582, please be advised that we are conducting workover operations on our No. 1 Piland Unit, which Is a north offset to the acreage embraced by our Lease No. 61676, and we propose to continue our efforts to make a farmout on Section 32 or, in lieu thereof, we may give consideration to the drilling of a well prior to the expiration date.

Lease No. 61917 covers the W/2 SW Section 2-25S-32W. Panhandle Eastern owns the SE NE Section 2, and we should know within a few days whether or not they will either join in the drilling of this test or farm out their interest in the unit.

We realize that all three of the leases set out above are getting very close to expiration dates; however, in view of our efforts to carry our negotiations to completion, it would be appreciated if your company could waive the right of assignment covering the acreage embraced by the subject leases.

COPY

[fol. 488] In the event you are agreeable to the above, kindly indicate your acceptance hereof in the space provided below and return a copy of this letter to this office at your earliest convenience.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ J. P. WARDEN
J. P. Warden
Division Landman

JEH:mw

ACCEPTED, this 9 day of
August, 1954

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

[fol. 489]

EXHIBIT A-73

FPC Gas Rate
Schedule No. 84
Supplement No. 73
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 13 AM '54
Federal Power Commission

[Stamp—Illegible.]

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

August 4, 1954

Re: AFE 4239
Contract 18,196
AFE 17,572
Haskell County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hoffsess

Gentlemen:

In response to our letter of June 25, 1954 you granted to us an extension to August 1, 1954 in which to offer to your company an assignment to the following described oil and gas leases:

Lease No. 61864	SE/4 Section 23-27S-32W	Exp. 8/28/54
Lease No. 61902	W/4 Section 23-27S-32W	Exp. 8/28/54

As we advised in our letter of June 25, 1954 we made an attempt to negotiate a farmout deal whereby a test well would be drilled in Section 37-27S-32W; however, we were

unsuccessful in doing so and therefore, pursuant to the provisions of the Cities Service Contract, we hereby offer to you assignment of the oil and gas leases set out above.

If you wish assignment of the leases described above, please advise and we will have the necessary instrument prepared and executed. If yon do not wish an assignment, please so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ J. P. WARDEN
J. P. Warden
Division Landman

JEH:mw

We do not wish assignment of the above leases and hereby release said leases from the terms of said Gas Purchase Contract, the same as though said leases had not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By

Dated

COPY

[fol. 490]

EXHIBIT A-74

FPC Gas Rate
Schedule No. 84
Supplement No. 74
Filing Date: Nov 16, 1954
Effective Date: Accepted

Received
Nov 16 5 13 AM '54
Federal Power Commission

[Stamp—Illegible.]

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

August 13, 1954

Re: AFE 17,514
AFE 4239
Contract 18,195
Morton County, Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hofsess

Gentlemen:

We drilled a well in Section 12-31S-41W, Morton County, Kansas. The unit comprised the NE/4, SE/4 and W/4 Section 12 and the NE/4 Section 13-31S-41W. The test has only recently been plugged and abandoned. Therefore, pursuant to the provisions of the Cities Service Gas Contract dated June 23, 1950, we hereby offer to you assignment covering the oil and gas lease listed below:

Lease No. 61518 NE/4 Section 13-31S-1W Exp. 8/26/54

If you wish assignment of the lease described above, please advise and we will have the necessary instrument prepared and executed. If you do not wish an assignment,

please so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ J. P. WARDEN
J. P. Warden
Division Landman

JEH:mw

We do not wish assignment of the above lease and hereby release said leases from the terms of said Gas Purchase Contract, the same as though said lease had not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By

Dated

COPY

[fol. 491]

EXHIBIT A-75

FPC Gas Rate
Schedule No. 84
Supplement No. 75
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 13 AM '54
Federal Power Commission

[Stamp—Received Aug 30 1954, Stanolind Oil and Gas Company, Oklahoma City, Okla.]

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

August 19, 1954

Re: AFE 4239
Contract 18,196
Hugoton Area
Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hofsess

Gentlemen:

We have been attempting to negotiate deals whereby we would in some cases join other operators in the drilling of test wells or farm out acreage for the drilling of test wells in the areas affecting our leases described below, and where we have had difficulty in working out these deals, we are in practically all cases attempting to renew our leases. However, to date we have been unsuccessful in renewing the leases set out below and, therefore, pursuant to the provisions of Gas Sales Contract dated June 23, 1950, we hereby offer to you assignments thereof:

Lease No.	Description	Expiration Date	Comments
Finney County			
6833	137 ac. in Sec. 20-24S-32W	9/6/54	We have a proposed test set up under AFE 17,607 covering acreage in Secs. 19 & 20 south of the river and east of Highway 83; however, the 137 ac. described above is not in the unit.
0629 B	NW/4 Sec. 36-26S-32W	9/15/54	We are trying to renew this lease.
1819 B	SW/4 Sec. 10-24S-32W	9/25/54	This lease has been renewed and therefore is not included in this offer.
Haskell County			
3625	SE/4 Sec. 10-29S-32W	9/1/54	We have been attempting to renew this lease; however, we have not been able to do so to date.
[fol. 492]			
Kearny County			
1708	E/2 SE/4 Sec. 34-22S-37W	9/7/54	Trying to renew.
1717	SE/4 Sec. 26-21S-35W	9/15/54	We drilled a dry hole on this section.
0552 B & C	NE/4 Sec. 23-21S-35W	9/18/54	We had this acreage in a farmout deal; however, the well will not be drilled in Section 23.
Morton County			
0778 B	SW/4 Sec. 35-32S-41W	9/13/54	Our plans for drilling a test in this area did not materialize. We are attempting to renew this lease.

Insofar as our records disclose, this report covers all acreage expiring in September, 1954. We have only a few leases expiring in October, 1954, upon which a report will be submitted within a few days.

If you wish assignment of the leases described above, please advise and we will have the necessary instrument prepared and executed. If you do not wish an assignment, please so indicate in the space provided below and return a signed copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ J. P. WARDEN
J. P. Warden
Division Landman

JEH:mw

We do not wish assignment of the above leases and hereby release said leases from the terms of said Gas Purchase Contract, the same as though said leases had not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

Date 8-26-54

[fol. 493]

EXHIBIT A-76

FPC Gas Rate
Schedule No. 84
Supplement No. 76
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 13 AM '54
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY, OKLAHOMA

August 25, 1954

Re: AFE 4239
Contract 18,196
Hugoton Field Area
Kansas

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma

Attention: Mr. Russel W. Hofsess

Gentlemen:

Under the terms of Paragraph 3, Article 4, of Gas Purchase Contract dated June 23, 1950, we are obligated to offer to you assignment of the following leases sixty days prior to the expiration date:

Lease No. 62173—NW/4 Section 25-21S-35W—Exp. 10/26/54
Lease No. 62174—SW/4 Section 25-21S-35W—Exp. 10/26/54

If you wish assignment of the leases described above, please advise. If you do not wish assignment, kindly indicate in the space provided below and return a signed copy of this letter to this office.

We also advise you that we are continuing our efforts to purchase a renewal lease on our Lease No. 62440, NE/4 Section 32-23S-32W, which expires on October 2, 1954. We should have definite word on this lease by the first of next week or later.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ J. P. WARDEN
J. P. Warden
Division Landman

CNM:mw

We do not wish assignment of the above leases and hereby release said leases from the terms of said Gas Purchase Contract, the same as though said leases had not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

Dated 8-26-54

[fol. 494]

EXHIBIT "C"

FPC Gas Rate
Schedule No. 84
Supplement No. 77
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 06 AM '54
Federal Power Commission

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the matter of the application of certain royalty owners in the Hugoton Gas Field requesting orders as to a fixed price and measurement regulations in said Hugoton Gas Field.	DOCKET No. 44,079-C (C-3216) CONSERVATION DIVISION

ORDER

Now on this 2nd day of December, 1953, the above-entitled matter comes before the Commission for further consideration and final disposition. The Commission, having examined the petition, files and record, and being fully advised in the premises, finds:

1. That the petition herein was filed by the Southwest Kansas Royalty Owners Association, a non-profit corporation, and certain individuals who are the owners of minerals in place or royalty interests in the Hugoton Gas Field, and that it is a petition for a new minimum wellhead price in said field of 14 cents per M.c.f. on a pressure basis of 16.4 pounds per square inch or in the alternative not less than 12 cents per M.c.f. measured on a pressure basis of 14.65 pounds per square inch.

2. That after due notice a public hearing was schedules at the Allis Hotel, Wichita, Kansas, on September 26, 1952,

at which time on motion of certain intervenors the matter was continued to October 20, 1952, in Topeka, and that hearings were held thereon at Topeka on October 20, 21, 22 and 23, 1952, December 15, 16, 17, 18 and 19, 1952, and January 14, 15 and 16, 1953.

[fol. 495] 3. That appearances were entered on behalf of the following: Southwest Kansas Royalty Owners Association and certain individual petitioners by Howard T. Fleeson, Dale M. Stucky, both of Wichita, and A. E. Kraemer, Hugoton, their attorneys; Northern Natural Gas Company by its attorneys Lawrence I. Shaw, Omaha, Nebraska, and Mark Adams, Wichita; Panhandle Eastern Pipe Line Company by its attorneys Edward H. Lange, Kansas City, Missouri, Louis R. Gates, Kansas City, Kansas, and Mark Adams, Wichita; Cities Service Gas Company by its attorneys O. R. Stites, Sr., and Joe Rolston, both of Oklahoma City, Oklahoma, Mark Adams, Wichita, and O. R. Stites, Jr., of Topeka; Kansas-Nebraska Natural Gas Company by its attorneys James Conway, Hastings, Nebraska, and M. F. Cosgrove, Topeka; Kansas-Colorado Utilities by its attorney Harold Bolton, Abilene. Other appearances include: Consumers Cooperative Association, et al. by their attorney Phillip Dergeance, Lawrence; Lehigh Portland Cement Company by its attorney Frederick G. Apt, of Iola, and R. F. Jones; Coleman Company of Wichita by A. A. Knapp; the Office of Price Stabilization by its attorney Frank Theis of Arkansas City; the Eastern Kansas Gas Company of Iola, by J. H. Page and John McNally, both of Iola; Kansas Association of Municipal Utilities by its attorney Charles W. Lower, Kansas City, Kansas. That the following attorneys appeared on behalf of cities of Kansas as their respective city attorneys: James W. Wallace, Scott City; C. J. Brenneisen, Kansas City, Kansas; O. C. Jordan, Beloit; Casey Jones, Hill City; Corwin Spencer, Oakley; H. D. Oelschlaeger, Plainville; Max Jones, Goodland; Sam W. G. Lowe, Colby; F. A. Sloan, Hoxie; Charles Stough, Lawrence and Fred W. Aley, Wichita; that James A. McClure, Robert L. Webb, Ralph W. Oman, all of Topeka, [fol. 496] and Jerome M. Joffee of Kansas City, Missouri, [since deceased] appeared, representing a group of pro-

testing cities. Jay Kyle, General Counsel and R. C. Woodward, Special Counsel, appeared for the Commission and the public generally. That the Commission has jurisdiction of the subject matter and of the parties.

4. That since the public hearings referred to in Finding No. 2, the Commission entered an order on May 20, 1953, in its Docket No. 34,780-C (C-1825) changing the definition of "Gas, Cubic Foot," as defined by Commission Rule 82-2-201 adopted December 24, 1947, and on file with the Revisor of Statutes pursuant to Laws 1947, Chapter 440. That said order made specific findings relating to the obsolescence of its former rule relating to "Gas, Cubic Foot," which was statewide in its application, and as a result thereof adopted a new definition of "Gas, Cubic Foot," pursuant to its statutory authority (G. S. 1949, Chapter 55, Article 7, as amended). That said definition applies to each and every gas field in the State of Kansas except those wells specifically prohibited from regulation by the proviso in G. S. 1949, 55-703, and applies to all withdrawals of gas in the State of Kansas since July 1, 1953, 12:01 a.m.; said rule as amended is currently on file with the Revisor of Statutes in accordance with G. S. 1949, 77-405 et seq.

5. That in Docket No. 35,154-C (C-1868) on February 18, 1949, the Commission promulgated an Interim Order, in which findings included *inter alia* that in the interest of conservation the fair and reasonable minimum price of natural gas at the wellhead in the Hugoton Field should be eight cents (8¢) per M.c.f., and that all takers of gas from [fol. 497] said field would attribute thereto for purposes of payments to producers, landowners, lease owners and royalty owners, the fair and reasonable minimum price of eight cents (8¢) per M.c.f. at the wellhead until further order of the Commission in the investigation instituted by it in Docket No. C-164.

6. That subsequent to the Interim Order dated February 18, 1949, Kansas-Nebraska Natural Gas Company and Northern Natural Gas Company filed applications for judicial reviews thereof in the District Court of Finney County,

Kansas, under the provisions of the Laws of 1945, Chapter 233, Section 9; that likewise, under the same authority, Panhandle Eastern Pipe Line Company brought a similar action in the District Court of Seward County, Kansas; and that Cities Service Gas Company filed a complaint against the Commission in the United States District Court for the District of Kansas, which subsequently was dismissed by that company. The three cases in the state courts were consolidated for hearing before the District Court of Finney County sitting both in the capacity of Judge of Finney County District Court and Judge pro tem of Seward County District Court. From adverse decisions in the district courts, all three takers of gas (Kansas-Nebraska, Northern and Panhandle) took appeals to the Supreme Court of Kansas, which upheld the district courts and sustained the Commission's authority to establish the minimum wellhead price of eight cents (8¢) per M.c.f., (*Kansas-Nebraska Natural Gas Co.* v. *State Corporation Commission*, 169 Kan. 722). The three appellants subsequently filed motions for rehearing which were denied by the Supreme [fol. 498] Court, (*Kansas-Nebraska Natural Gas Co.* v. *State Corporation Com.*, 170 Kan. 341). Following the two Supreme Court decisions just referred to, the Commission in the original docket by appropriate order dated February 21, 1951, promulgated an implementing order to its Interim Order and later entered an Order Nunc Pro Tunc on March 8, 1951, in said docket, to correct an error in its order of February 21, 1951. The Commission, at the time it entered its Interim Order of February 19, 1949, wrote a Memorandum Opinion under date of February 23, 1949, which related some of the history of the field, the powers of the Commission and generally the Commission's jurisdiction over the conservation of this irreplaceable natural resource and the production of gas in the Hugoton Field of Kansas. It would be unnecessarily repetitious to set out here the contents of that Memorandum Opinion.

7. That the proceeding in this docket is not a rate matter.

8. The Commission as of this date has entered in this docket a Memorandum Opinion which should be incorporated herein and made a part of this order by reference.

9. That because of the voluminous record and the widespread interest in the subject matter, not only in the interest of conservation and protection of correlative rights but also because of the possible effect the decision herein may have on certain classes of rates to consumers, we have felt impelled to re-examine the question of a reasonable minimum wellhead price structure in the Kansas Hugoton Gas Field which is now furnishing gas to more than one-fourth of the states of the Union.

[fol. 499] 10. It is not disclosed by the record before us that the eight-cent (8¢) price adopted by the Commission through its Interim Order of February 18, 1949, and now in effect, has had any adverse effect upon marketing or marketing conditions in the field or that it has adversely affected ultimate domestic consumer rates. Promulgation of a minimum price is a paramount factor in conservation and the protection of correlative rights. Having a law value in the stages of production, gas can be used uneconomically and wastefully because of the low commercial price being paid at the wellhead. That an important source of gas for the economy of not only Kansas but many other states is the Kansas portion of the Hugoton Gas Field; that gas is not now competitive with other fuels, namely, oil and coal; that the cheapness of gas is conducive to waste as prohibited by statute.

11. That conditions exist which, coupled with known differentials in transportation costs, adversely affect correlative rights.

12. Public records of this Commission clearly indicate that since February, 1948, the number of wells in the field has more than tripled, and that ultimate development of the field is rapidly approaching. All of this leads to the inevitable conclusion that withdrawals from the field are nearing their peak, and also carries the warning that practices of conservation must be heightened if the public is to enjoy the fullest recovery of gas from the Hugoton Field.

13. A true stimulant to conservation is price, and a low price is conducive to waste which is specifically prohibited

by G. S. 1949, 55-701. Experience in the Hugoton Field since 1949, the year of the first minimum wellhead order, has shown that a floor price in the interest of conservation [fol. 500] supports the concept of conservation by economic uses and the avoidance of waste. It is apparent this can be best accomplished through a realistic minimum field price for this precious fuel.

14. Since price is a prime factor in avoiding various types of waste, strengthening that factor strengthens conservation in the Hugoton Field.

15. The minimum price of eight cents (8¢) per M.c.f. at the wellhead adopted by the Interim Order of February 18, 1949, is not now an effective conservation measure for the various reasons amplified in the Memorandum Opinion.

16. That a fair and reasonable minimum wellhead price to be attributed to all gas taken from the field, except gas used for lease operations, is in the public interest and welfare, encourages conservation, furthers the avoidance of discrimination and helps to promote orderly development and exploration.

17. That currently a fair and reasonable minimum price for gas at the wellhead in the Hugoton Field is eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.).

18. That all persons, firms or corporations which take gas or cause gas to be taken from the Kansas Hugoton Gas Field on and after January 1, 1954, 12:01 a.m., should be required, as a condition precedent for withdrawal from the common source of supply, to pay or attribute to all gas taken, except gas for the operations of leases, for all purposes including payments to producers, landowners, lease owners and royalty owners, the fair and reasonable mini- [fol. 501] mum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.) at the wellhead.

19. That the petition herein should not be granted on either basis requested.

IT IS, THEREFORE, BY THE COMMISSION ORDERED: That the Memorandum Opinion entered herein this date be, and the same is, hereby incorporated and made a part of this order by reference.

IT IS FURTHER BY THE COMMISSION ORDERED: That the petition herein be, and the same is, hereby denied.

IT IS FURTHER BY THE COMMISSION ORDERED: That all persons, firms or corporations which take gas or cause gas to be taken from the Hugoton Gas Field in Kansas on and after January 1, 1954, 12:01 a.m., shall, as a condition precedent for withdrawal from the common source of supply, pay or attribute to all gas taken, except gas for the operations of leases, for all purposes including payments to producers, landowners, lease owners and royalty owners, the fair and reasonable minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.) at the wellhead until further order or orders of this Commission.

The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders, and promulgating and implementing such further rules and regulations as from time to time it may deem proper.

BY THE COMMISSION IT IS SO ORDERED.

RAYMOND B. HARVEY
Raymond B. Harvey, Secretary

(SEAL)

[fol. 502]

Received
May 4 10 52 AM '55
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

P. O. Box 1654
April 5, 1955

Subject: Letter Agreement
Elliott Gas Unit
Hugoton Field, Kansas

Cities Service Gas Company
P. O. Box 1995
Oklahoma City, Oklahoma

Gentlemen:

We have recently acquired a lease on a 2.65 acre tract in Section 36-28S-33W, Haskell County, Kansas. All other acreage to be included in the Elliott Gas Unit to be comprised of leases in this section is dedicated to the gas purchase contract dated June 23, 1950, between you and us.

We desire to dedicate to said contract of June 23, 1950, the additional 2.65 acres referred to above. Attached hereto is Exhibit "A" giving complete description of the tract above mentioned.

If you are agreeable to amending said gas purchase contract to include this additional acreage, will you please so indicate by signing this letter in the space provided below for your acceptance.

Yours very truly,

STANOLIND OIL AND GAS COMPANY

By /s/ K. W. BOLT
Its Attorney-in-Fact

Approved—NS, JEK, LMP

Attachment
Accepted this 13th day
of April, 1955

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

COPY

18196

1. This filing is submitted pursuant to Commission Order No. 197 to reflect 65% reimbursement of the Kansas gas severance tax of 1% effective July 1, 1957 levied on producers by act of the Kansas Legislature in House Bill No. 383.

2. Such reimbursement is provided by Article XII of the contract dated June 23, 1950, between Pan American Petroleum Corporation and Cities Service Gas Company on file with the Commission and designated Pan American FPC Gas Rate Schedule No. 84.

[fol. 509] 3. A copy of this filing was served on the buyer as required by the Commission's Regulations on June 28, 1957.

4. Comparison of prices prior to and subsequent to such change in price (Cents per MCF):

Date	Base Price per Mcf	Tax Reimbursement per Mcf	Total Price per Mcf
June 30, 1957	11¢	—0—	11¢
July 1, 1957	11¢	.0715¢	11.0715¢

Sales for 12 months ending March 31, 1957 58,489,163 Mcf. (on 14.65 # pressure base)

This filing is being made under the compulsion of Order No. 174-B, which was issued without notice and a hearing. The undersigned believes that said order is subject to certain procedural defects and that, in some respects, it exceeds the authority delegated to the Commission by the Natural Gas Act and is, therefore, to that extent invalid. In addition, it is impossible, in this instance, for the undersigned to determine with certainty whether said order applies to it. The undersigned does not desire to incur the penalties which would be imposed upon it for violating those portions of the order which are of questionable meaning or of doubtful validity, especially in the event the order is ultimately determined to be definite or valid in those respects. Therefore, this filing is made under protest without prejudice to the undersigned's right to attack the validity of said order by pending or future proceedings before the Commission or in the courts, and nothing here-

in shall be deemed to constitute a waiver of said right. If it should be judicially determined that said order is invalid as to others in respects which are applicable to the [fol. 510] undersigned, then the fact that the undersigned has, in the meantime, complied with said order shall not deprive it of its right thereafter to rely upon such determination.

This filing is made solely to comply with the provisions of Section 154.94 of Order No. 174-B. The undersigned reiterates that all contract prices and pricing provisions to which this notice refers are currently effective and operative under its contract and as parts of the initial Rate Schedule previously effective, filed with, and accepted by the Commission. A change in price pursuant to the provisions of said contract as constituted on the date of the initial filing thereof is not a "change" to the contract or Rate Schedule within the meaning of Section 4 of the Natural Gas Act, and is, therefore, not a "change in rate." The provisions of Section 154.94 or other sections of the rules, which purport to abrogate contract provisions, or require the filing of notices of "changes in rates" in such instances, are thus invalid to the extent that they are inconsistent with Section 4 of the Act. In transmitting this filing, the undersigned does not waive its objections to this requirement of the rules, or its right to raise such objection before the Commission or in the courts.

This filing has no applicability to the prices and pricing provisions covered hereby to the extent that such prices and pricing provisions relate to sales of natural gas in intrastate commerce.

Please address all inquiries and correspondence in this matter to the following:

John F. Jones, Attorney
511 South Boston Avenue
Tulsa 3, Oklahoma

Respectfully submitted,

PAN AMERICAN PETROLEUM CORPORATION

By /s/ NORTON STANDEVEN
Norton Standeven, Attorney
P. O. Box 1654
Oklahoma City 1, Oklahoma

[fol. 503]

Exhibit "A"

Stanolind Lease No.	Lessor	Lessee	Date of Contract	Lands Covered
141,547	Sublette District No. 3 Haskell County, Kansas, by W. E. Orth, Dale McLain, and Harold Anderson, Members of the Board	Stanolind Oil and Gas Company	November 1, 1954	Block 70 Section 36-28S-33W Haskell County, Kansas

LSL-pjg

[fol. 504]
FPC Gas Rate
Schedule No. 84
Supplement No. 79
Filing Date: May 12 1955
Effective Date: 6-12-55

Received
May 12 4 04 PM '55
Federal Power Commission

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

P. O. Box 1654
April 12, 1955

Subject: Letter Agreement
Hicks Gas Unit "B"
Hugoton Field, Kansas

Cities Service Gas Company
P. O. Box 1995
Oklahoma City, Oklahoma

Gentlemen:

We have recently acquired a lease on two tracts in Section 2-25S-32W, Finney County, Kansas. All other acreage to be included in the Hicks Gas Unit "B" to be comprised of leases in th section is dedicated to the gas purchase contract dated June 23, 1950, between you and us.

We desire to dedicate to said contract of June 23, 1950, these additional two tracts referred to above. Attached hereto is Exhibit "A" giving complete description thereof.

If you are agreeable to amending said gas purchase contract to include this additional acreage, will you please so indicate by signing this letter in the space provided below for your acceptance.

Yours very truly,

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
Its Attorney-in-Fact

Approved—NS

Attachment
Accepted this 27th day
of April, 1955

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH

COPY

18196

[fol. 505]

Exhibit "A"

Stanolind Lease No.	Lessor	Lessee	Date of Lease	Lands Covered	Ownership of W. I.
141429	Inez S. Bristow	Panhandle Eastern Pipe Line Company	November 18, 1953	SE/4 NE/4 Section 2-25S-32W, Finney County, Kansas, as to gas rights only in Permian gas producing horizons.	Stanolind 100%
141546	Carrie Brooks	Stanolind Oil and Gas Company	September 7, 1954	W/2 SW/4 Section 2-25S-32W, Finney County, Kansas	Stanolind 100%

Received
May 12 4 04 PM '55
Federal Power Commission

[fol. 506]

EXHIBIT D

STANOLIND OIL AND GAS COMPANY

GAS-STATEMENT

Contract #18196

RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES
DUPLICATE WILL NOT BE FURNISHED WITHOUT CHARGE

2

COPIES 1 31704 1 99900

OPERATOR STANOLIND OIL AND GAS COMPANY
LEASE & NO. BARBEN GAS UNIT D 21 28
LOCATION KEARNY COUNTY KANSAS
FIELD HUGOTON 423
SOLD TO STANOLIND OIL AND GAS COMPANY
STATION NO. BLM 015009

Mo. Yr. Produced	Gross M.C.F. or Gallons	Average Price	Gross Value Gas or Gasoline	Gross Value Residue Gas		Gross Value Other Products	Total Gross Value Before Tax
5 54	4091	.11	15 67	450 01	90	20 01	485 69

Mo. Yr. Entered	Production Tax	New Mexico G.O. Tax	Misc. Tax	Total Tax	Total Gross Value After Tax
5 54	1 53			1 53	484 16

[fol. 507]

5-7-90

CITIES SERVICE GAS COMPANY
GAS PURCHASED FROM OTHERS
May, 1954

Page 17

Sta. No.	Company	Cont. No.		8 Oz.	14.65# With Basis	Rate	16.4# Amount
KANSAS "B" ACREAGE				745.112 FIELD PURCHASES-			
	STANOLIND OIL & GAS COMPANY	777		OTHERS—KANSAS		*10*	.11
6726	Abolt #1 *21*	*2*	*07*	101 87	106 47		92 61
6617	Anderson 1B	*17*		72 37	75 64		65 79
6348	Andes #1	*19*		50 69	52 98		46 08
6531	Baker #1, Paul	*31*		267 85	279 73		243 50
6285	Barben #1	*32*		266 33	278 58		242 12
6286	Barben B-1	*33*		373 90	390 79		339 91
6287	Barben "C"	*34*		369 26	385 94		335 69
Contract = 18196							
6650	Barben D-1	*28*		39 17	40 91		35 61
6457	Bardwell 1	*35*		40 78	42 55		37 07
~~6512~~	~~Barrow #1~~ See Joint Int.						
6994	Beaty 1	*98*		78 20	81 73		71 09
6290	Beaty B-1	*41*		243 61	254 41		221 46
6462	Beaty C	*38*		91 52	95 58		83 20
6630	Beaty D-1	*72*		278 92	291 04		253 56
6644	Beaty E	*73*		218 61	228 31		198 74
6635	Beaty "F"	*77*		91 78	95 93		83 44
6289	Beaty, May #1	*39*		32 29	33 72		29 35
6894	Beaty, May "B"	*69*		51 81	54 15		47 10
6862	Beaty, May "C"	*90*		78 28	81 75		71 16
6863	Beaty, May "D"	*91*		60 93	63 63		55 39
6856	Beaty, May "E"	*92*		53 25	55 66		48 41
7027	Beaty, May "F"	*89*		25 59	26 72		23 26
6921	Beaty 1, R. T.	*83*		52 56	54 93		47 78
6291	Bender 1	*48*		15 40	16 10		14 00
6893	Bentley	*85*		28 40	29 66		25 82
6292	Bentrup #1	*49*		89 50	93 47		81 36

Sta. No.	Company	Cont. No.	8 Oz.	14.65# With Basis	Rate	16.4# Amount
6425	Bentrup "B"	*70*	129 80	135 66		118 00
6432	" C-1	*71*	44 88	46 87		40 80
6745	" D-1	*68*	166 46	173 85		151 33
6685	Bereman #1	*63*	721 00	753 57		655 45
6293	Beymer C-1	*46*	23 21	24 26		21 10
6647	" E-1	*76*	38 54	40 25		35 04
6645	" D-1	*75*	53 46	55 88		48 60
6854	Branine	*103*	64 55	67 46		58 68
6349	Brattin #1	*65*	25 34	26 51		23 04
6866	Bronk	*86*	42 21	44 11		38 37
6952	Brown, E. A.	*114*	106 72	111 46		97 02
6897	Bucklin	*110*	36 97	38 67		33 61
6296	Burden 1	*95*	34 94	36 54		31 76
6533	" B-1	*96*	24 04	25 12		21 85
6297	Campbell B-1	*119*	41 95	43 88		38 14
6298	" D-1	*121*	43 15	45 07		39 23
6610	Chadd #1	*136*	23 51	24 59		21 37
6861	Cleary Gas Unit	*174*	89 22	93 18		81 11
6299	Cohen	*153*	46 13	48 22		41 94

Italicized numerals are handwritten.

[fol. 508]

EXHIBIT "A"

June 28, 1957

FPC Gas Rate
Schedule No. 84
Supplement No. 80
Filing Date: 7-1-57
Effective Date: 7-1-57

Received
Jul 1 4 54 PM '57
Federal Power Commission

Letter of Transmittal

Notice Relative to Rate Schedule No. 84 of PAN AMERICAN PETROLEUM CORPORATION, an Independent Producer in Compliance with Federal Power Commission Order No. 174-B (Pan American Contract No. 18,196)

Supplement No. ..... to

Rate Schedule No. 84

Secretary
Federal Power Commission
Washington 25, D. C.

Dear Sir:

This filing is made subject to all of the reservations set out in the Application for a Certificate of Public Convenience and Necessity in Docket No. G-4904 and in the original filing of the captioned contract as an Initial Rate Schedule. Pan American denies that it is a natural gas company under the Natural Gas Act or that it is subject to the jurisdiction of the Commission with respect to the transaction referred to herein, but in compliance with the regulations of the Commission submits this notice of a change in price.

Pursuant to Order No. 197 issued by the Commission on May 23, 1957, the following is submitted:

[fol. 511]
FPC Gas Rate
Schedule No. 84
Supplement No. 81
Filing Date: 9-26-57
Effective Date: 10-30-56

Received
Sep 26 4 21 PM '57
Federal Power Commission

STATE OF KANSAS)
) SS.
COUNTY OF KEARNY)

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt and the sufficiency of which are hereby acknowledged, STANOLIND OIL AND GAS COMPANY, a corporation (hereinafter referred to as "Assignor"), hereby does bargain, sell, assign, transfer and convey unto GRAHAM-MICHAELIS DRILLING COMPANY, a co-partnership, composed of W. A. Michaelis, Jr., William L. Graham and Marjorie Lois Graham, its successors and assigns (hereinafter referred to as "Assignee"), all its right, title and interest in and to the following described oil and gas leases, covering land situated in Kearny County, State of Kansas, to wit:

Lease No. 77830:

Lessor: Edmund R. Coring, et ux.
Lessee: Joe E. Denham
Date: December 19, 1946
Recorded: Book 15, at page 42

Lease No. 77865:

Lessor: Melvina Steen, et vir.
Lessee: Joe E. Denham
Date: December 19, 1946
Recorded: Book 15, at page 136

insofar as said leases cover the gas rights only in all horizons or strata from the surface to, but not below, the base

of the Hugoton Pay Zone lying in and under the following described land in said County and State, to wit:

> The West Half (W/2) and the Northeast Quarter (NE/4) of Section Eight (8), Township Twenty-Three South (T23S), Range Thirty-Seven West (R37W),

expressly excepting and reserving unto the Assignor, its successors and assigns, all right, title and interest in and to said oil and gas leases insofar as said leases cover the oil rights in all horizons or strata lying in and under said land and the gas rights in all horizons or strata lying in and under said land below the base of the Hugoton Pay Zone [fol. 512] (said leases and land above described, to the extent that said leases cover the gas rights only in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under said land, hereinafter sometimes being referred to as the "lease acreage"), subject to the following terms, covenants and conditions, to wit:

1. The lease acreage covered hereby is assigned by the Assignor and accepted by the Assignee subject to the overriding royalties, production payments, net profits obligations, carried working interests and other payments out of or with respect to production which are of record and with which said lease acreage is encumbered; and the Assignee hereby assumes and agrees to pay, perform or carry, as the case may be, each of said overriding royalties, production payments, net profits obligations, carried working interests and other payments out of or with respect to production, to the extent that it is or remains a burden on the lease acreage herein assigned.

2. In addition to any and all other overriding royalties, production payments and other encumbrances to which said lease acreage may be subject, the Assignor hereby excepts and reserves unto itself, its successors and assigns, an overriding royalty of one-eighth of seven-eighths (1/8 of 7/8) of all the gas produced and saved from all horizons or strata from the surface to the base of the Hugoton Pay

Zone lying in and under the land above described and in and under land with which the land above described may be pooled, unitized or consolidated, the market value (at the well) of which shall be paid to the Assignor free of all cost and expense, except taxes on production; provided, that, in the event the leases above described cover less than all the gas mineral rights in and to the land above described from the surface thereof to, but not below, the base of the Hugoton Pay Zone, said overriding royalty, insofar as it pertains to gas produced and saved from all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under said land, shall be proportionately reduced so as to be equal to that proportion of one-eighth of seven-eighths (1/8 of 7/8) of said gas which the interest in and to said gas mineral rights in said horizons or strata under said land covered by said leases bears to the full and undivided gas mineral estate in said horizons or strata under said land; and provided, further, that in the event the land above described has been, or shall be, pooled, unitized or [fol. 513] consolidated with other land so as to form a drilling unit of approximately six hundred forty (640) acres in size, then said overriding royalty, insofar as it pertains to the gas produced and saved from all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under the land included in said unit, shall be proportionately reduced, or further proportionately reduced if the first proviso be applicable thereto, so as to be equal to that proportion of one-eighth of seven-eighths (1/8 of 7/8) which the acreage above described, included in said unit, bears to all the acreage in said unit.

3. With respect to the overriding royalty herein excepted and reserved by the Assignor, the Assignor and the Assignee agree as follows:

(a) That said overriding royalty shall extend to any extensions or renewals of the leases above described.

(b) That gas used in drilling and operations on said lease acreage and in the handling of production therefrom shall be deducted before said overriding royalty is computed.

(c) That the Assignee shall furnish to the Assignor authentic itemized monthly reports of all production from said lease acreage, such reports to be mailed not later than the fifteenth day of the month following that for which the report is made.

(d) That if and when, and at such time as, Assignee shall have received the aggregate gross sum of Fifty Thousand Dollars ($50,000.00) from the sale of Assignee's interest in the gas produced and saved from the land above described, and the land with which the land above described has been pooled, unitized or consolidated, Assignor shall have the right and option, for a period of thirty (30) days following the receipt of written notice from Assignee that said aggregate gross sum of Fifty Thousand Dollars ($50,000.00) has been received by Assignee, of exchanging its overriding royalty interest in the oil and gas leases above described, as expressly reserved in paragraph 2 hereof, free of all cost, expense or other consideration, for an undivided one-half (½) interest in the working interest under such leases and an undivided one-half (½) interest in the tangible equipment, including, but not by way of limitation, casing, tubing and lines used in the operation of any well or wells located upon the land above described and land with which the land above described has been pooled, unitized or consolidated; provided, that, if said leases above described and the gas lease delivered Assignee by Assignor contemporaneously herewith, which said gas lease covers the unleased interest of Assignor in the gas rights in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the W/2 and the SE/4 of Section 8-23S-37W, Kearny County, Kansas, do not cover the full and undivided interest in the gas mineral rights in and to all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under all of Section 8-23S-37W, Kearny County, Kansas, [fol. 514] said aggregate gross sum of Fifty Thousand Dollars ($50,000.00) to be received by Assignee

before said right and option vests in Assignor, as hereinabove provided, shall be proportionately reduced so as to be equal to that proportion of Fifty Thousand Dollars ($50,000.00) which the interest in and to said gas mineral rights in all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under Section 8-23S-37W, Kearny County, Kansas, covered by the leases above described and the gas lease delivered Assignee by Assignor contemporaneously herewith bears to the full and undivided gas mineral estate therein. In this connection, it is agreed and understood that Assignee shall bear and pay all production taxes of every kind and character now or hereafter levied or assessed against, or otherwise chargeable to, the gas produced from said lease acreage (save and except such production taxes as may be levied or assessed against, or otherwise chargeable to, the gas attributable to Assignor's overriding royalty interest herein reserved), and that Assignee shall not be entitled to any set-off or credit by reason of the payment of such taxes against said sum of Fifty Thousand Dollars ($50,000.00), or said sum of Fifty Thousand Dollars ($50,000.00) as proportionately reduced.

4. Assignor further does hereby except and reserve unto itself, its successors and assigns, all liquid and liquefiable hydrocarbons contained in the gas produced and saved from all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, or which may be attributable thereto from any unit which may include all horizons or strata under said land and which said liquid and liquefiable hydrocarbons may be processed or extracted from the gas produced from said horizons or strata through facilities designated in writing from Assignor to Assignee, provided, that until such time as Assignor may notify Assignee in writing of its desire that said gas be processed and the liquid and liquefiable hydrocarbons contained therein be extracted from said gas, this reservation of liquid and liquefiable hydrocarbons shall in no manner interfere with, pre-

vent or prohibit the marketing of gas produced and saved from said land by Assignee. With respect to the liquid and liquefiable hydrocarbons processed and extracted from the gas produced and saved from all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, or which may be attributable thereto from any unit including said horizons or strata under said land, Assignor agrees to reimburse Assignee for all royalty paid by Assignee on said liquid and liquefiable hydrocarbons.

5. This assignment shall in all respects be subject to the [fol. 515] terms, covenants and conditions of the following prior contracts affecting said lease acreage, to wit:

(a) Gas Processing Agreement, dated June 23, 1950, by and between Stanolind Oil and Gas Company, therein referred to as "Stanolind", and Cities Service Gas Company, therein referred to as "Cities".

(b) Gas Purchase Contract, dated June 23, 1950, by and between Stanolind Oil and Gas Company, therein referred to as "Seller", and Cities Service Gas Company, therein referred to as "Buyer".

6. As to any wells drilled on said lease acreage by the Assignee after the delivery of this assignment, the Assignee shall give the Assignor access to said wells and the derrick floor at all reasonable times and, upon request of the Assignor, shall furnish to the Assignor well samples of all cores and cuttings consecutively taken, unless the Assignor elects to take such samples itself; and, at the request of the Assignor, the Assignee shall furnish to the Assignor copies of any electrical well formation surveys made.

7. In the event that the Assignee receives a bona fide offer which it is willing to accept for the purchase of said lease acreage, or any part thereof or interest therein, from a person, firm or corporation ready, able and willing to purchase such lease acreage, part thereof or interest therein, the Assignee immediately shall give written notice thereof to the Assignor, including in said notice the name and ad-

dress of such offeror, the price offered and all other terms and conditions of the offer. The Assignor, for a period of ten (10) days after the receipt of said notice, shall have the prior and preferred right and option to purchase from the Assignee the lease acreage, or the part thereof or interest therein, covered by said offer at the price and according to the terms and conditions specified in said offer; provided, that, if the Assignor fails to exercise its said right and option by giving written notice of its acceptance within ten (10) days after receipt of the above mentioned notice, the Assignee shall accept said offer and complete said sale in accordance with said offer within sixty (60) days after the expiration of said period of ten (10) days; and provided, further, that if the Assignee fails to accept said offer and complete said sale within said period of sixty (60) days, the preferred right and option of the Assignor under this paragraph shall be considered as revived, and the Assignee [fol. 516] shall not complete said sale to said prospective purchaser unless and until said offer again has been presented to the Assignor, as hereinabove provided, and the Assignor again has failed to elect to purchase on the terms and conditions of said offer. All offers at any time made to the Assignee, its successors or assigns, for the purchase of said lease acreage, or any part thereof or interest therein, shall be subject to all the terms and conditions of this paragraph 7.

8. In the event that the Assignee should elect to surrender, let expire, abandon or release all or any of its rights in said lease acreage, or any part thereof, the Assignee shall notify the Assignor not less than sixty (60) days in advance of such surrender, expiration, abandonment or release, and, if requested so to do by the Assignor, the Assignee immediately shall reassign such rights in said lease acreage, or such part thereof, to the Assignor. If production from the leases covered hereby ceases at any time during the primary term thereof, the Assignee promptly shall notify the Assignor thereof in writing.

9. This assignment is made subject to all the terms and the express and implied covenants and conditions of the

above described leases, insofar as such leases cover the gas rights only in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, which terms, covenants and conditions the Assignee hereby assumes and agrees to perform with respect to said rights lying in and under said land; provided, that, unless the Assignee should elect to surrender, let expire, abandon or release its rights in said lease acreage and should comply with the provisions hereof relative thereto, Assignor shall make a bona fide effort to pay such delay rentals as may hereafter become due and payable under the terms of the oil and gas leases above described, insofar as said leases cover the land above described, and Assignee shall reimburse Assignor to the extent of one-half (½) of all of such rentals so paid within fifteen (15) days following the receipt of Assignor's billing therefor. Said terms, covenants and conditions, insofar as the said lease acreage is concerned, shall be binding on the Assignee not only in favor of the lessors and their heirs and assigns, but also in favor of the Assignor and its successors and assigns.

[fol. 517] 10. This assignment is made without warranty of any kind.

11. All notices, reports and other communications required or permitted hereunder, or desired to be given with respect to the rights or interests herein assigned or reserved, shall be deemed to have been properly given or delivered when delivered personally or sent by registered mail or telegraph, with all postage or charges fully prepaid, and addressed to the Assignor and Assignee, respectively as follows:

Assignor:

Stanolind Oil and Gas Company
First National Building
P. O. Box 1654
Oklahoma City, Oklahoma

Assignee:

Graham-Michaelis Drilling Company
1005 East Second Street
Wichita, Kansas

12. The terms, covenants and conditions hereof shall be binding upon, and shall inure to the benefit of, the Assignor and the Assignee and their respective successors or assigns; and such terms, covenants and conditions shall be covenants running with the land above described and the lease acreage herein assigned, and with each transfer or assignment of said land or lease acreage.

To Have and to Hold said lease acreage unto the Assignee, its successors and assigns, subject to the terms, covenants and conditions hereinabove set forth.

Executed this 30th day of October, 1956.

Stanolind Oil and Gas Company

By /s/ V. G. Hill
Its Attorney-in-Fact

Approved—HOL, JEH, TW

State of Oklahoma)
) SS.
County of Oklahoma)

Before Me, the undersigned, a Notary Public within and for said County and State, on this 30th day of October, 1956, personally appeared V. G. Hill, to me known to be the identical person who executed the within and foregoing instrument as Attorney in Fact of Stanolind Oil and Gas Company, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of Stanolind Oil and Gas Company, a corporation, for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

/s/ JOAN MILLER
Notary Public

My commission expires:
Joan Miller, Notary Public
State of Oklahoma

My Commission Expires July 16, 1957

[fol. 518]
HOL/bi 6/27/56

FPC Rate
Schedule No. 84
Supplement No. 82
Filing Date: 9-26-57
Effective Date: 11-9-56

STATE OF KANSAS)
) SS.
COUNTY OF HASKELL)

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt and the sufficiency of which are hereby acknowledged, STANOLIND OIL AND GAS COMPANY, a corporation (hereinafter referred to as "Assignor"), hereby does bargain, sell, assign, transfer and convey unto GRAHAM-MICHAELIS DRILLING COMPANY, a co-partnership, composed of W. A. Michaelis, Jr., William L. Graham and Marjorie Lois Graham, its successors and assigns, (hereinafter referred to as "Assignee"), all its right, title and interest in and to the following described oil and gas lease, covering land situated in Haskell County, State of Kansas, to-wit:

Lease No. 76846:

Lessor:- Lulu Wheatley et al
Lessee: Fred C. Koch
Date: June 5, 1943
Recorded: Book 4, at page 62

in so far as said lease covers the gas rights only in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the following described land in said County and State, to-wit:

All of Section Thirty-three (33), Township Twenty-eight South (T28S), Range Thirty-two West (R32W),

expressly excepting and reserving unto the Assignor, its successors and assigns, all right, title and interest in and to said oil and gas lease in so far as said lease covers the oil rights in all horizons or strata lying in and under said land and the gas rights in all horizons or strata lying in and under said land below the base of the Hugoton Pay Zone (said lease and land above described, to the extent that said lease covers the gas rights only in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under said land, hereinafter sometimes being referred to as the "lease acreage"), subject to the following terms, covenants and conditions:

1. The lease acreage covered hereby is assigned by the Assignor and accepted by the Assignee subject to the overriding royalties, production payments, net profits ob- [fol. 519] ligations, carried working interests and other payments out of or with respect to production which are of record and with which said lease acreage is encumbered; and the Assignee hereby assumes and agrees to pay, perform or carry, as the case may be, each of said overriding royalties, production payments, net profits obligations, car-

ried working interests and other payments out of or with respect to production, to the extent that it is or remains a burden on the lease acreage herein assigned.

2. In addition to any and all other overriding royalties, production payments and other encumbrances to which said lease acreage may be subject, the Assignor hereby excepts and reserves unto itself, its successors and assigns, an overriding royalty of one-sixteenth of seven-eighths (1/16 of 7/8) of all the gas produced and saved from all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, the market value (at the well) of which shall be paid to the Assignor free of all cost and expense, except taxes on production, provided, that, in the event the lease above described does not cover all the gas mineral rights in and to all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under any part of the land above described, then, said overriding royalty, as to the gas produced and saved from all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under said part of said land, or attributable thereto, shall be proportionately reduced so as to be equal to that proportion of one-sixteenth of seven-eighths (1/16 of 7/8) of said gas which the interest in and to said gas mineral rights in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under said part of said land covered by said lease bears to the full and undivided gas mineral estate in said horizons under said land.

3. With respect to the overriding royalty herein excepted and reserved by the Assignor, the Assignor and the Assignee agree as follows:

(a) That said overriding royalty shall extend to any extension or renewal of the lease above described.

(b) That gas used in drilling and operations on said lease acreage and in the handling of production therefrom shall be deducted before said overriding royalty is computed.

[fol. 520] (c) That the Assignee shall furnish to the Assignor authentic itemized monthly reports of all production from said lease acreage, such reports to be mailed not later than the fifteenth day of the month following that for which the report is made.

(d) That if and when, and at such time as, Assignee shall have received the aggregate gross sum of Thirty Thousand Dollars ($30,000.00) from the sale of Assignee's interest in the gas produced and saved from the land above described, Assignor shall have the right and option, for a period of thirty (30) days following the receipt of written notice from Assignee that said aggregate gross sum of Thirty Thousand Dollars ($30,000.00) has been received by Assignee, of exchanging its overriding royalty interest in the oil and gas lease hereinabove described, as expressly reserved in paragraph 2 hereof, free of all cost, expense and other consideration, for an undivided one-fourth (1/4) interest in the working interest under such lease and an undivided one-fourth (1/4) interest in the tangible equipment, including, but not by way of limitation, casing, tubing and lines used in the operation of any well or wells located upon the land above described, provided, that, if said lease above described does not cover the full and undivided interest in the gas mineral rights in and to all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, said aggregate gross sum of Thirty Thousand Dollars ($30,000.00) to be received by Assignee before said right and option vests in Assignor, as hereinabove provided, shall be proportionately reduced so as to be equal to that proportion of Thirty Thousand Dollars ($30,000.00) which the interest in and to said gas mineral rights in all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under the land above described covered by the lease above described bears to the full and undivided gas mineral estate therein. In this connec-

tion, it is agreed and understood that Assignee shall bear and pay all production taxes of every kind and character now or hereafter levied or assessed against, or otherwise chargeable to, the gas produced and saved from the land above described (save and except such production taxes as may be levied or assessed against, or otherwise chargeable to, the gas attributable to Assignor's overriding royalty interest hereby reserved) and that Assignee shall not be entitled to any set-off or credit by reason of the payment of such taxes against said sum of Thirty Thousand Dollars ($30,000.00), or said sum of Thirty Thousand Dollars ($30,000.00) as proportionately reduced.

4. Assignor further does hereby except and reserve unto itself, its successors and assigns, all of the liquid and liquefiable hydrocarbons contained in the gas produced and saved from all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, which said liquid and liquefiable hydrocarbons may be processed and extracted from the gas produced and saved from said horizons through facilities designated in writing from Assignor to Assignee, provided, that, until such time as Assignor may notify Assignee in writing of its desire that said gas be processed [fol. 521] and the liquid and liquefiable hydrocarbons contained therein be extracted from said gas, this reservation of liquid and liquefiable hydrocarbons shall in no manner interfere with, prevent or prohibit the marketing of gas produced and saved from said land by Assignee. With respect to liquid and liquefiable hydrocarbons processed and extracted from the gas produced and saved from all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, Assignor agrees to reimburse Assignee for all royalty paid by Assignee on said liquid and liquefiable hydrocarbons.

5. This assignment shall in all respects be subject to the terms, covenants and conditions of the following prior contracts affecting said lease acreage, to-wit:

(a) Gas Processing Agreement, dated June 23, 1950, by and between Stanolind Oil and Gas Company, therein referred to as "Stanolind", and Cities Services Gas Company, therein referred to as "Cities."

(b) Gas Purchase Contract, dated June 23, 1950, by and between Stanolind Oil and Gas Company, therein referred to as "Seller", and Cities Service Gas Company, therein referred to as "Buyer."

6. As to any wells drilled on said lease acreage by the Assignee after the delivery of this assignment, the Assignee shall give the Assignor access to said wells and the derrick floor at all reasonable times and, upon request of the Assignor, shall furnish to the Assignor well samples of all cores and cuttings consecutively taken, unless the Assignor elects to take such samples itself; and, at the request of the Assignor, the Assignee shall furnish to the Assignor copies of any electrical well formation surveys made.

7. In the event that the Assignee receives a bona fide offer which it is willing to accept for the purchase of said lease acreage, or any part thereof or interest therein, from a person, firm or corporation ready, able and willing to purchase such lease acreage, part thereof or interest therein, the Assignee immediately shall give written notice thereof to the Assignor, including in said notice the name and address of such offeror, the price offered and all other terms and conditions of the offer. The Assignor, for a period of ten (10) days after the receipt of said notice, shall have the prior and preferred right and option to purchase from the Assignee the lease acreage, or the part thereof or interest therein, covered by said offer at the price and according to the terms and conditions specified in said offer; provided, that, if the Assignor fails to exer- [fol. 522] cise its said right and option by giving written notice of its acceptance within ten (10) days after receipt of the above mentioned notice, the Assignee shall accept said offer and complete said sale in accordance with said offer within sixty (60) days after the expiration of said

period of ten (10) days; and, provided, further, that if the Assignee fails to accept said offer and complete said sale within said period of sixty (60) days, the preferred right and option of the Assignor under this paragraph shall be considered as revived, and the Assignee shall not complete said sale to said prospective purchaser unless and until said offer again has been presented to the Assignor, as hereinabove provided, and the Assignor again has failed to elect to purchase on the terms and conditions of said offer. All offers at any time made to the Assignee, its successors or assigns, for the purchase of said lease acreage, or any part thereof or interest therein, shall be subject to all the terms and conditions of this paragraph 7.

8. In the event that the Assignee should elect to surrender, let expire, abandon or release all or any of its rights in said lease acreage, or any part thereof, the Assignee shall notify the Assignor not less than sixty (60) days in advance of such surrender, expiration, abandonment or release, and, if requested so to do by the Assignor, the Assignee immediately shall reassign such rights in said lease acreage, or such part thereof, to the Assignor. If production from the lease covered hereby ceases at any time during the primary term thereof, the Assignee promptly shall notify the Assignor thereof in writing.

9. This assignment is made subject to all the terms and the express and implied covenants and conditions of the above described lease, in so far as such lease covers the gas rights only in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, which terms, covenants and conditions the Assignee hereby assumes and agrees to perform with respect to said rights lying in and under said land; provided, that, unless the Assignee should elect to surrender, let expire, abandon or release its rights in said lease acreage and should comply with the provisions hereof relative thereto, Assignor shall make a bona fide effort to pay such delay rentals as

may hereafter become due and payable under the terms of the oil and gas lease above described, in so far as said [fol. 523] lease covers the land above described, and Assignee shall reimburse Assignor to the extent of one-half (1/2) of all of such rentals so paid within fifteen (15) days following the receipt of Assignor's billing therefor. Said terms, covenants and conditions, in so far as the said lease acreage is concerned, shall be binding on the Assignee, not only in favor of the lessor and her heirs and assigns, but also in favor of the Assignor and its successors and assigns.

10. This assignment is made without warranty of any kind.

11. All notices, reports and other communications required or permitted hereunder, or desired to be given with respect to the rights or interests herein assigned or reserved, shall be deemed to have been properly given or delivered when delivered personally or sent by registered mail or telegraph, with all postage or charges fully prepaid, and addressed to the Assignor and Assignee, respectively, as follows:

Assignor:

Stanolind Oil and Gas Company
First National Building
P. O. Box 1654
Oklahoma City, Oklahoma

Assignee:

Graham-Michaelis Drilling Company
1005 East Second Street
Wichita, Kansas

12. The terms, covenants and conditions hereof shall be binding upon, and shall inure to the benefit of, the Assignor and the Assignee and their respective successors or assigns; and such terms, covenants and conditions shall be

covenants running with the land above described and the lease acreage herein assigned, and with each transfer or assignment of said land or lease acreage.

TO HAVE AND TO HOLD said lease acreage unto the Assignee, its successors and assigns, subject to the terms, covenants and conditions hereinabove set forth.

EXECUTED this 9th day of November, 1956.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
Its Attorney in Fact

Approved—HOL, JEH, TW

[fol. 524]

STATE OF OKLAHOMA)
) SS.
COUNTY OF OKLAHOMA)

BEFORE ME, the undersigned, a Notary Public within and for said County and State, on this 9th day of November, 1956, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney in Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

/s/ JOAN MILLER
Notary Public

My commission expires:

JOAN MILLER, NOTARY PUBLIC
STATE OF OKLAHOMA
My Commission Expires July 16, 1957

[fol. 525]
FPC Gas Rate
Schedule No. 84
Supplement No. 83
Filing Date: 9-27-57
Effective Date: 11-9-56

STATE OF KANSAS)
) SS.
COUNTY OF HASKELL)

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt and the sufficiency of which are hereby acknowledged, STANOLIND OIL AND GAS COMPANY, a corporation (hereinafter referred to as "Assignor"), hereby does bargain, sell, assign, transfer and convey unto GRAHAM-MICHAELIS DRILLING COMPANY, a co-partnership, composed of W. A. Michaelis, Jr., William L. Graham and Marjorie Lois Graham, its successors and assigns (hereinafter referred to as "Assignee"), all its right, title and interest in and to the following described oil and gas leases, covering land situated in Haskell County, State of Kansas, to-wit:

Lease No. 61066:

Lessor: C. G. Dennis et ux
Lessee: Joe E. Denham
Date: September 1, 1944
Recorded: Book 5, at page 151

Lease No. 85748:

Lessor: Maude Fankhouser et vir
Lessee: L. T. Buck
Date: April 20, 1948
Recorded: Book 9, at page 3

Lease No. 85749:

Lessor: Dale Fankhouser et al
Lessee: L. T. Buck
Date: April 10, 1948
Recorded: Book 9, at page 2

in so far as said leases cover the gas rights only in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the following described land in said County and State, to-wit:

All of Section Three (3), Township Twenty-nine South (T29S), Range Thirty-two West (R32W),

expressly excepting and reserving unto the Assignor, its successors and assigns, all right, title and interest in and to said oil and gas leases in so far as said leases cover the oil rights in all horizons or strata lying in and under said land and the gas rights in all horizons or strata lying in and under said land below the base of the Hugoton Pay Zone (said leases and land above described, to the extent [fol. 526] that said leases cover the gas rights only in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under said land, hereinafter sometimes being referred to as the "lease acreage"), subject to the following terms, covenants and conditions:

1. The lease acreage covered hereby is assigned by the Assignor and accepted by the Assignee subject to the overriding royalties, production payments, net profits obligations, carried working interests and other payments out of or with respect to production which are of record and with which said lease acreage is encumbered; and the Assignee hereby assumes and agrees to pay, perform or carry, as the case may be, each of said overriding royalties, production payments, net profits obligations, carried working interests and other payments out of or with respect to production, to the extent that it is or remains a burden on the lease acreage herein assigned.

2. In addition to any and all other overriding royalties, production payments and other encumbrances to which said lease acreage may be subject, the Assignor hereby excepts and reserves unto itself, its successors and assigns, an overriding royalty of one-sixteenth of seven-eighths (1/16 of 7/8) of all the gas produced and saved from all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, the market value (at the well) of which shall be paid to the Assignor free of all cost and expense, except taxes on production, provided, that, in the event the leases above described do not cover all the gas mineral rights in and to all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under any part of the land above described, then, said overriding royalty, as to the gas produced and saved from all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under said part of said land, or attributable thereto, shall be proportionately reduced so as to be equal to that proportion of one-sixteenth of seven-eighths (1/16 of 7/8) of said gas which the interest in and to said gas mineral rights in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under said part of said land covered by said leases bears to the full and undivided gas mineral estate in said horizons under said land.

[fol. 527] 3. With respect to the overriding royalty herein excepted and reserved by the Assignor, the Assignor and the Assignee agree as follows:

(a) That said overriding royalty shall extend to any extensions or renewals of the leases above described.

(b) That gas used in drilling and operations on said lease acreage and in the handling of production therefrom shall be deducted before said overriding royalty is computed.

(c) That the Assignee shall furnish to the Assignor authentic itemized monthly reports of all production from said lease acreage, such reports to be mailed not later than the fifteenth day of the month following that for which the report is made.

(d) That if and when, and at such time as, Assignee shall have received the aggregate gross sum of Thirty Thousand Dollars ($30,000.00) from the sale of Assignee's interest in the gas produced and saved from the land above described, Assignor shall have the right and option, for a period of thirty (30) days following the receipt of written notice from Assignee that said aggregate gross sum of Thirty Thousand Dollars ($30,000.00) has been received by Assignee, of exchanging its overriding royalty interest in the oil and gas leases hereinabove described, as expressly reserved in paragraph 2 hereof, free of all cost, expense and other consideration, for an undivided one-fourth (¼) interest in the working interest under such leases and an undivided one-fourth (¼) interest in the tangible equipment, including, but not by way of limitation, casing, tubing and lines used in the operation of any well or wells located upon the land above described, provided, that, if said leases above described do not cover the full and undivided interest in the gas mineral rights in and to all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, said aggregate gross sum of Thirty Thousand Dollars ($30,000.00) to be received by Assignee before said right and option vests in Assignor, as hereinabove provided, shall be proportionately reduced so as to be equal to that proportion of Thirty Thousand Dollars ($30,000.00) which the interest in and to said gas mineral rights in all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under the land above described covered by the leases above described bears to the full and undivided gas mineral estate therein. In this connection, it is agreed and understood that Assignee shall bear and pay all production taxes of every kind and character now or hereafter levied or assessed against, or otherwise chargeable to, the gas produced and saved from the land above described (save and except such production taxes as may be levied or assessed against, or otherwise chargeable to, the gas attributable to Assignor's overriding royalty inter-

est hereby reserved) and that Assignee shall not be entitled to any set-off or credit by reason of the payment of such taxes against said sum of Thirty Thousand Dollars ($30,000.00), or said sum of Thirty Thousand Dollars ($30,000.00) as proportionately reduced.

[fol. 528] 4. Assignor further does hereby except and reserve unto itself, its successors and assigns, all of the liquid and liquefiable hydrocarbons contained in the gas produced and saved from all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, which said liquid and liquefiable hydrocarbons may be processed or extracted from the gas produced and saved from said horizons through facilities designated in writing from Assignor to Assignee, provided, that, until such time as Assignor may notify Assignee in writing of its desire that said gas be processed and the liquid and liquefiable hydrocarbons contained therein be extracted from said gas, this reservation of liquid and liquefiable hydrocarbons shall in no manner interfere with, prevent or prohibit the marketing of gas produced and saved from said land by Assignee. With respect to liquid and liquefiable hydrocarbons processed and extracted from the gas produced and saved from all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, Assignor agrees to reimburse Assignee for all royalty paid by Assignee on said liquid and liquefiable hydrocarbons.

5. This assignment shall in all respects be subject to the terms, covenants and conditions of the following prior contracts affecting said lease acreage, to-wit:

(a) Gas Processing Agreement, dated June 23, 1950, by and between Stanolind Oil and Gas Company, therein referred to as "Stanolind", and Cities Service Gas Company, therein referred to as "Cities."

(b) Gas Purchase Contract, dated June 23, 1950, by and between Stanolind Oil and Gas Company, therein referred to as "Seller", and Cities Service Gas Company, therein referred to as "Buyer."

6. As to any wells drilled on said lease acreage by the Assignee after the delivery of this assignment, the Assignee shall give the Assignor access to said wells and the derrick floor at all reasonable times and, upon request of the Assignor, shall furnish to the Assignor well samples of all cores and cuttings consecutively taken, unless the Assignor elects to take such samples itself; and, at the request of the Assignor, the Assignee shall furnish to the Assignor copies of any electrical well formation surveys made.

7. In the event that the Assignee receives a bona fide offer which it is willing to accept for the purchase of said [fol. 529] lease acreage, or any part thereof or interest therein, from a person, firm or corporation ready, able and willing to purchase such lease acreage, part thereof or interest therein, the Assignee immediately shall give written notice thereof to the Assignor, including in said notice the name and address of such offeror, the price offered and all other terms and conditions of the offer. The Assignor, for a period of ten (10) days after the receipt of said notice, shall have the prior and preferred right and option to purchase from the Assignee the lease acreage, or the part thereof or interest therein, covered by said offer at the price and according to the terms and conditions specified in said offer; provided, that, if the Assignor fails to exercise its said right and option by giving written notice of its acceptance within ten (10) days after receipt of the above mentioned notice, the Assignee shall accept said offer and complete said sale in accordance with said offer within sixty (60) days after the expiration of said period of ten (10) days; and, provided, further, that if the Assignee fails to accept said offer and complete said sale within said period of sixty (60) days, the preferred right and option of the Assignor under this paragraph shall be considered as revived, and the Assignee shall not complete said sale to said prospective purchaser unless and until said offer again has been presented to the Assignor, as hereinabove provided, and the Assignor again has failed to elect to purchase on the terms and conditions of said offer. All offers at any time made to the Assignee, its successors or assigns,

for the purchase of said lease acreage, or any part thereof or interest therein, shall be subject to all the terms and conditions of this paragraph 7.

8. In the event that the Assignee should elect to surrender, let expire, abandon or release all or any of its rights in said lease acreage, or any part thereof, the Assignee shall notify the Assignor not less than sixty (60) days in advance of such surrender, expiration, abandonment or release, and, if requested so to do by the Assignor, the Assignee immediately shall reassign such rights in said lease acreage, or such part thereof, to the Assignor. If production from any lease covered hereby ceases at any time during the primary term thereof, the Assignee promptly shall notify the Assignor thereof in writing.

9. This assignment is made subject to all the terms and the express and implied covenants and conditions of the [fol. 530] above described leases, in so far as such leases cover the gas rights only in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, which terms, covenants and conditions the Assignee hereby assumes and agrees to perform with respect to said rights lying in and under said lands; provided, that, unless the Assignee should elect to surrender, let expire, abandon or release its rights in said lease acreage and should comply with the provisions hereof relative thereto, Assignor shall make a bona fide effort to pay such delay rentals as may hereafter become due and payable under the terms of the oil and gas leases above described, in so far as said leases cover the land above described, and Assignee shall reimburse Assignor to the extent of one-half (½) of all of such rentals so paid within fifteen (15) days following the receipt of Assignor's billing therefor. Said terms, covenants and conditions, in so far as the said lease acreage is concerned, shall be binding on the Assignee, not only in favor of the lessors and their heirs and assigns, but also in favor of the Assignor and its successors and assigns.

10. This assignment is made without warranty of any kind.

11. All notices, reports and other communications required or permitted hereunder, or desired to be given with respect to the rights or interests herein assigned or reserved, shall be deemed to have been properly given or delivered when delivered personally or sent by registered mail or telegraph, with all postage or charges fully prepaid, and addressed to the Assignor and Assignee, respectively, as follows:

Assignor:

Stanolind Oil and Gas Company
First National Building
P. O. Box 1654
Oklahoma City, Oklahoma

Assignee:

Graham-Michaelis Drilling Company
1005 East Second Street
Wichita, Kansas

12. The terms, covenants and conditions hereof shall be binding upon, and shall inure to the benefit of, the Assignor and the Assignee and their respective successors or assigns; and such terms, covenants and conditions shall be covenants [fol. 531] running with the land above described and the lease acreage herein assigned, and with each transfer or assignment of said land or lease acreage.

TO HAVE AND TO HOLD said lease acreage unto the Assignee, its successors and assigns, subject to the terms, covenants and conditions hereinabove set forth.

EXECUTED this 9th day of November, 1956.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
Its Attorney in Fact

Approved—JEH, TW

STATE OF OKLAHOMA)
) SS.
COUNTY OF OKLAHOMA)

BEFORE ME, the undersigned, a Notary Public within and for said County and State, on this 9th day of November, 1956, personally appeared V. G. Hill, to me known to be the identical person who executed the within and foregoing instrument as Attorney in Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

/s/ JOAN MILLER
Notary Public

My commission expires:
JOAN MILLER, NOTARY PUBLIC
STATE OF OKLAHOMA
My Commission Expires July 16, 1957

[fol. 532]
FPC Gas Rate
Schedule No. 84
Supplement No. 84
Filing Date: 9-26-57
Effective Date: 1-2-57

STATE OF KANSAS)
) SS.
COUNTY OF KEARNY)

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt and the sufficiency of which are hereby acknowledged, STANOLIND OIL AND GAS COMPANY, a corporation (hereinafter referred to as "Assignor"), hereby does bargain, sell, assign, transfer and convey unto GRAHAM-MICHAELIS DRILLING COMPANY, a co-partnership, composed of W. A. Michaelis, Jr., William L. Graham and Marjorie Lois Graham, its successors and assigns (hereinafter referred to as "Assignee"), all of its right, title and interest in and to the following described oil and gas lease, covering land situated in Kearny County, State of Kansas, to wit:

Lessor: William Weber, et ux.
Lessee: Joe B. Denham
Date: May 15, 1947
Recorded: Book 15, at page 406

insofar as said lease covers the gas rights only in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the following described land in said County and State, to wit:

All of Section Five (5), Township Twenty-Three South (T23S), Range Thirty-Seven West (R37W),

expressly excepting and reserving unto the Assignor, its successors and assigns, all right, title and interest in and

to said oil and gas lease insofar as said lease covers the oil rights in all horizons or strata lying in and under said land and the gas rights in all horizons or strata lying in and under said land below the base of the Hugoton Pay Zone (said lease and land above described, to the extent that said lease covers the gas rights only in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under said land, hereinafter sometimes being referred to as the "lease acreage"), subject to the following terms, covenants and conditions:

[fol. 533] 1. The lease acreage covered hereby is assigned by the Assignor and accepted by the Assignee subject to the overriding royalties, production payments, net profits obligations, carried working interests and other payments out of or with respect to production which are of record and with which said lease acreage is encumbered; and the Assignee hereby assumes and agrees to pay, perform or carry, as the case may be, each of said overriding royalties, production payments, net profits obligations, carried working interests and other payments out of or with respect to production, to the extent that it is or remains a burden on the lease acreage herein assigned.

2. In addition to any and all other overriding royalties, production payments and other encumbrances to which said lease acreage may be subject, the Assignor hereby excepts and reserves unto itself, its successors and assigns, an overriding royalty of one-eighth of seven-eighths (1/8 of 7/8) of all the gas produced and saved from all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, the market value (at the well) of which shall be paid to the Assignor free of all cost and expense, except taxes on production, provided, that, in the event the lease above described does not cover all the gas mineral rights in and to all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under any part of the land above described, then, said overriding royalty, as to the gas produced and saved from all horizons or strata from the surface to, but not below,

the base of the Hugoton Pay Zone lying in and under said part of said land, or attributable thereto, shall be proportionately reduced so as to be equal to that proportion of one-eighth of seven-eighths (1/8 of 7/8) of said gas which the interest in and to said gas mineral rights in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under said part of said land covered by said lease bears to the full and undivided gas mineral estate in said horizons under said land.

3. With respect to the overriding royalty herein excepted and reserved by the Assignor, the Assignor and the Assignee agree as follows:

(a) That said overriding royalty shall extend to any extension or renewal of the lease above described.

[fol. 534] (b) That gas used in drilling and operations on said lease acreage and in the handling of production therefrom shall be deducted before said overriding royalty is computed.

(c) That the Assignee shall furnish to the Assignor authentic itemized monthly reports of all production from said lease acreage, such reports to be mailed not later than the fifteenth day of the month following that for which the report is made.

(d) That if and when, and at such time as, Assignee shall have received the aggregate gross sum of Fifty Thousand Dollars ($50,000.00) from the sale of Assignee's interest in the gas produced and saved from the land above described, Assignor shall have the right and option, for a period of thirty (30) days following the receipt of written notice from Assignee that said aggregate gross sum of Fifty Thousand Dollars ($50,000.00) has been received by Assignee, of exchanging its overriding royalty interest in the oil and gas lease hereinabove described, as expressly reserved in paragraph 2 hereof, free of all cost, expense or other consideration, for an undivided one-half (1/2) interest in the working interest under such lease and an undivided one-half (1/2) interest

in the tangible equipment, including, but not by way of limitation, casing, tubing and lines used in the operation of any well or wells located upon the lease acreage; provided, that, if said lease above described and the gas lease delivered Assignee by Assignor contemporaneously herewith, which said gas lease covers the unleased interest of Assignor in the gas rights in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the W/2 of Section 5-23S-37W, Kearny County, Kansas, do not cover the full and undivided interest in the gas mineral rights in and to all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, said aggregate gross sum of Fifty Thousand Dollars ($50,000.00) to be received by Assignee before said right and option vests in Assignor, as hereinabove provided, shall be proportionately reduced so as to be equal to that proportion of Fifty Thousand Dollars ($50,000.00) which the interest in and to said gas mineral rights in all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under the land above described covered by the lease above described and the gas lease delivered Assignee by Assignor contemporaneously herewith bears to the full and undivided gas mineral estate therein. In this connection, it is agreed and understood that Assignee shall bear and pay all production taxes of every kind and character now or hereafter levied or assessed against, or otherwise chargeable to, the gas produced from said lease acreage (save and except such production taxes as may be levied or assessed against, or otherwise chargeable to, the gas attributable to Assignor's overriding royalty interest herein reserved), and that Assignee shall not be entitled to any set-off or credit by reason of the payment of such taxes against said sum of Fifty Thousand Dollars ($50,000.00) or said sum of Fifty Thousand Dollars ($50,000.00) as proportionately reduced.

4. Assignor further does hereby except and reserve unto itself, its successors and assigns, all the liquid and liquefiable hydrocarbons contained in the gas produced and [fol. 535] saved from all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, which said liquid and liquefiable hydrocarbons may be processed or extracted from the gas produced from said horizons through facilities designated in writing from Assignor to Assignee, provided, that, until such time as Assignor may notify Assignee in writing of its desire that said gas be processed and the liquid and liquefiable hydrocarbons contained therein be extracted from said gas, this reservation of liquid and liquefiable hydrocarbons shall in no manner interfere with, prevent or prohibit the marketing of gas produced and saved from said land by Assignee. With respect to the liquid and liquefiable hydrocarbons processed and extracted from the gas produced and saved from all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, Assignor agrees to reimburse Assignee for all royalty paid by Assignee on said liquid and liquefiable hydrocarbons.

5. This assignment shall in all respects be subject to the terms, covenants and conditions of the following prior contracts affecting said lease acreage, to wit:

(a) Gas Processing Agreement, dated June 23, 1950, by and between Stanolind Oil and Gas Company, therein referred to as "Stanolind", and Cities Service Gas Company, therein referred to as "Cities".

(b) Gas Purchase Contract, dated June 23, 1950, by and between Stanolind Oil and Gas Company, therein referred to as "Seller", and Cities Service Gas Company, therein referred to as "Buyer".

6. As to any wells drilled on said lease acreage by the Assignee after the delivery of this assignment, the Assignee shall give the Assignor access to said wells and the derrick floor at all reasonable times and, upon request of

the Assignor, shall furnish to the Assignor well samples of all cores and cuttings consecutively taken, unless the Assignor elects to take such samples itself; and, at the request of the Assignor, the Assignee shall furnish to the Assignor copies of any electrical well formation surveys made.

7. In the event that the Assignee receives a bona fide offer which it is willing to accept for the purchase of said lease acreage, or any part thereof or interest therein, from [fol. 536] a person, firm or corporation ready, able and willing to purchase such lease acreage, part thereof or interest therein, the Assignee immediately shall give written notice thereof to the Assignor, including in said notice the name and address of such offeror, the price offered and all other terms and conditions of the offer. The Assignor, for a period of ten (10) days after the receipt of said notice, shall have the prior and preferred right and option to purchase from the Assignee the lease acreage, or the part thereof or interest therein, covered by said offer at the price and according to the terms and conditions specified in said offer; provided, that, if the Assignor fails to exercise its said right and option by giving written notice of its acceptance within ten (10) days after receipt of the above mentioned notice, the Assignee shall accept said offer and complete said sale in accordance with said offer within sixty (60) days after the expiration of said period of ten (10) days; and provided, further, that if the Assignee fails to accept said offer and complete said sale within said period of sixty (60) days, the preferred right and option of the Assignor under this paragraph shall be considered as revived, and the Assignee shall not complete said sale to said prospective purchaser unless and until said offer again has been presented to the Assignor, as hereinabove provided, and the Assignor again has failed to elect to purchase on the terms and conditions of said offer. All offers at any time made to the Assignee, its successors or assigns, for the purchase of said lease acreage, or any part thereof or interest therein, shall be subject to all the terms and conditions of this paragraph 7.

8. In the event that the Assignee should elect to surrender, let expire, abandon or release all or any of its rights in said lease acreage, or any part thereof, the Assignee shall notify the Assignor not less than sixty (60) days in advance of such surrender, expiration, abandonment or release, and, if requested so to do by the Assignor, the Assignee immediately shall reassign such rights in said lease acreage, or such part thereof, to the Assignor. If production from the lease covered hereby ceases at any time during the primary term thereof, the Assignee promptly shall notify the Assignor thereof in writing.

[fol. 537] 9. This assignment is made subject to all the terms and the express and implied covenants and conditions of the above described lease, insofar as such lease covers the gas rights only in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, which terms, covenants and conditions the Assignee hereby assumes and agrees to perform with respect to said rights lying in and under said land; provided, that, unless the Assignee should elect to surrender, let expire, abandon or release its rights in said lease acreage and should comply with the provisions hereof relative thereto, Assignor shall make a bona fide effort to pay such delay rentals as may hereafter become due and payable under the terms of the oil and gas lease above described, insofar as said lease covers the land above described, and Assignee shall reimburse Assignor to the extent of one-half (½) of all of such rentals so paid within fifteen (15) days following the receipt of Assignor's billing therefor. Said terms, covenants and conditions, insofar as the said lease acreage is concerned, shall be binding on the Assignee not only in favor of the lessor and his heirs and assigns, but also in favor of the Assignor and its successors and assigns.

10. This assignment is made without warranty of any kind.

11. All notices, reports and other communications required or permitted hereunder, or desired to be given with

respect to the rights or interests herein assigned or reserved, shall be deemed to have been properly given or delivered when delivered personally or sent by registered mail or telegraph, with all postage or charges fully prepaid, and addressed to the Assignor and Assignee, respectively, as follows:

Assignor:

Stanolind Oil and Gas Company
First National Building
P. O. Box 1654
Oklahoma City, Oklahoma

Assignee:

Graham-Michaelis Drilling Company
1005 East Second Street
Wichita, Kansas

12. The terms, covenants and conditions hereof shall be binding upon, and shall inure to the benefit of, the Assignor and the Assignee and their respective successors or assigns; [fol. 538] and such terms, covenants and conditions shall be covenants running with the land above described and the lease acreage herein assigned, and with each transfer or assignment of said land or lease acreage.

TO HAVE AND TO HOLD said lease acreage unto the Assignee, its successors and assigns, subject to the terms, covenants and conditions hereinabove set forth.

EXECUTED this 2nd day of January, 1957.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
Its Attorney in Fact

Approved—J.M. HOL

STATE OF OKLAHOMA)
) SS.
COUNTY OF OKLAHOMA)

BEFORE ME, the undersigned, a Notary Public within and for said County and State, on this 2nd day of January, 1957, personally appeared V. G. Hill, to me known to be the identical person who executed the within and foregoing instrument as Attorney in Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

/s/ CATHERINE L. WRIGHT
Notary Public

My commission expires:
My Commission Expires Oct. 26, 1960

[fol. 539]
HOL/bi 6/26/56

FPC Gas Rate
Schedule No. 84
Supplement No. 85
Filing Date: 9-26-57
Effective Date: 1-2-57

STATE OF KANSAS)
) ss.
COUNTY OF KEARNY)

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt and the sufficiency of which are hereby acknowledged, STANOLIND OIL AND GAS COMPANY, a corporation (hereinafter referred to as "Assignor"), hereby does bargain, sell, assign, transfer and convey unto GRAHAM-MICHAELIS DRILLING COMPANY, a co-partnership, composed of W. A. Michaelis, Jr., William L. Graham and Marjorie Lois Graham, its successors and assigns (hereinafter referred to as "Assignee"), all its right, title and interest in and to the following described oil and gas leases, covering land situated in Kearny County, State of Kansas, to-wit:

Lease No. 72113-A:

Lessor: Jesse S. Bower et ux
Lessee: Stanolind Oil and Gas Company
Date: April 5, 1946
Recorded: Book 14, at page 6

Lease No. 72113-B:

Lessor: A. A. Hilliard et ux
Lessee: Stanolind Oil and Gas Company
Date: April 12, 1946
Recorded: Book 14, at page 11

Lease No. 72100:

Lessor: John D. G. Stucky et ux
Lessee: Stanolind Oil and Gas Company
Date: April 13, 1946
Recorded: Book 14, at page 5

insofar as said leases cover the gas rights only in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the following described land in said County and State, to-wit:

> Lots One (1) and Two (2) and the South Half of the Northeast Quarter (S/2 NE 4) of Section Six (6), Township Twenty-three South (T23S), Range Thirty-seven West (R37W), and the South Half (S/2) of Section Thirty-six (36), Township Twenty-two South (T22S), Range Thirty-eight West (R38W),

expressly excepting and reserving unto the Assignor, its successors and assigns, all right, title and interest in and to said oil and gas leases insofar as said leases cover the [fol. 540] oil rights in all horizons or strata lying in and under said land and the gas rights in all horizons or strata lying in and under said land below the base of the Hugoton Pay Zone (said leases and land above described, to the extent that said leases cover the gas rights only in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under said land, hereinafter sometimes being referred to as the "lease acreage"), subject to the following terms, covenants and conditions, to-wit:

1. The lease acreage covered hereby is assigned by the Assignor and accepted by the Assignee subject to the overriding royalties, production payments, net profits obligations, carried working interests and other payments out of or with respect to production which are of record and with which said lease acreage is encumbered; and the Assignee hereby assumes and agrees to pay, perform or carry, as the case may be, each of said overriding royalties, production payments, net profits obligations, carried working interests and other payments out of or with respect to pro-

duction, to the extent that it is or remains a burden on the lease acreage herein assigned.

2. In addition to any and all other overriding royalties, production payments and other encumbrances to which said lease acreage may be subject, the Assignor hereby excepts and reserves unto itself, its successors and assigns, an overriding royalty of one-eighth of seven-eighths (⅛ of ⅞) of all the gas produced and saved from all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under the land above described and in and under the land with which the land above described has been, or shall be, pooled, unitized or consolidated, the market value (at the well) of which shall be paid to the Assignor free of all cost and expense, except taxes on production, provided, that, in the event the leases above described cover less than all the gas mineral rights in and to all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under the land above described, said overriding royalty, insofar as it pertains to the gas produced and saved from all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under said land, shall be proportionately reduced so as to be equal to that proportion of one-eighth of seven-eighths (⅛ of ⅞) of said gas which the interest in and to said gas mineral rights in all horizons or strata from the surface [fol. 541] to the base of the Hugoton Pay Zone lying in and under said land covered by said leases bears to the full and undivided interest in said gas mineral estate in said horizons or strata under said land; and, provided, further, that in the event the land above described has been, or shall be, pooled, unitized, or consolidated with other land so as to form a drilling unit of approximately six hundred forty (640) acres in size, then, said overriding royalty, insofar as it pertains to the gas produced and saved from all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under the land included in said unit, shall be proportionately reduced, or further proportionately reduced if the first proviso hereof shall be applicable thereto, so as to be equal to that proportion of one-eighth of seven-eighths (⅛ of ⅞) of said gas production from

said unit which the acreage above described included in said unit bears to all the acreage in said unit.

3. With respect to the overriding royalty herein excepted and reserved by the Assignor, the Assignor and the Assignee agree as follows:

(a) That said overriding royalty shall extend to any extensions or renewals of the leases above described.

(b) That gas used in drilling and operations on said lease acreage and in the handling of production therefrom shall be deducted before said overriding royalty is computed.

(c) That the Assignee shall furnish to the Assignor authentic itemized monthly reports of all production from said lease acreage, such reports to be mailed not later than the fifteenth day of the month following that for which the report is made.

(d) That if and when, and at such time as, Assignee shall have received the aggregate gross sum of Fifty Thousand Dollars ($50,000.00) from the sale of Assignee's interest in the gas produced and saved from the land above described and the land with which the land above described has been, or shall be, pooled, unitized or consolidated, Assignor shall have the right and option, for a period of thirty (30) days following the receipt of written notice from Assignee that said aggregate gross sum of Fifty Thousand Dollars ($50,000.00) has been received by Assignee, of exchanging its overriding royalty interest in the oil and gas leases above described, as expressly reserved in paragraph 2 hereof, free of all cost, expense or other consideration, for an undivided one-half (1/2) interest in the tangible equipment, including, but not by way of limitation, casing, tubing and lines used in the operation of any well or wells located upon the land above described and upon land with which the land above described has been, or shall be, pooled, unitized or consolidated, provided, that, if said leases above described and the gas

lease delivered Assignee by Assignor contemporaneously herewith, which said gas lease covers the unleased interest of Assignor in the gas rights in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under [fol. 542] Lots 1 and 2 and the S/2 NE/4 and the SE/4 of Section 6-23S-37W, Kearny County, Kansas, do not cover the full and undivided interest in the gas mineral rights in and to all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under all of the E/2 of Section 6-23S-37W and the S/2 of Section 36-22S-38W, Kearny County, Kansas, said aggregate gross sum of Fifty Thousand Dollars ($50,000.00) to be received by Assignee before said right and option vests in Assignor, as hereinabove provided, shall be proportionately reduced so as to be equal to that proportion of Fifty Thousand Dollars ($50,000.00) which the interest in and to said gas mineral rights in all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under the E/2 of Section 6-23S-37W and the S/2 of Section 36-22S-38W, Kearny County, Kansas, covered by the leases above described and the gas lease delivered Assignee by Assignor contemporaneously herewith bears to the full and undivided gas mineral estate therein. In this connection, it is agreed and understood that Assignee shall bear and pay all production taxes of every kind and character now or hereafter levied or assessed against, or otherwise chargeable to, the gas produced from said lease acreage and from any unit which may include said lease acreage (save and except such production taxes as may be levied or assessed against, or otherwise chargeable to, the gas attributable to Assignor's overriding royalty interest herein reserved) and that Assignee shall not be entitled to any set-off or credit by reason of the payment of taxes against said sum of Fifty Thousand Dollars ($50,000.00), or said sum of Fifty Thousand Dollars ($50,000.00) as proportionately reduced.

4. Assignor further does hereby except and reserve unto itself, its successors and assigns, all liquid and liquefiable hydrocarbons contained in the gas produced and saved from all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, or which may be attributable thereto from any unit which may include all of said horizons or strata lying in and under said land, and which said liquid and liquefiable hydrocarbons may be processed and extracted from the gas produced and saved from said horizons or strata through facilities designated in writing from Assignor to Assignee, provided, that, until such time as Assignor may notify Assignee in writing of its desire that said gas be processed and the liquid and liquefiable hydrocarbons contained therein be extracted from said gas, this reservation of liquid and liquefiable hydrocarbons shall in no manner interfere with, prevent or prohibit the marketing of gas produced and saved from said land by Assignee. With respect to the liquid and liquefiable hydrocarbons processed and extracted from the gas produced and saved [fol. 543] from all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, or which may be attributable thereto from any unit including said horizons or strata under said land, Assignor agrees to reimburse Assignee for all royalty paid by Assignee on said liquid and liquefiable hydrocarbons.

5. This assignment shall in all respects be subject to the terms, covenants and conditions of the following prior contracts affecting said lease acreage, to-wit:

(a) Gas Processing Agreement, dated June 23, 1950, by and between Stanolind Oil and Gas Company, therein referred to as "Stanolind", and Cities Service Gas Company, therein referred to as "Cities."

(b) Gas Purchase Contract, dated June 23, 1950, by and between Stanolind Oil and Gas Company, therein referred to as "Seller", and Cities Service Gas Company, therein referred to as "Buyer."

6. As to any wells drilled on said lease acreage by the Assignee after the delivery of this assignment, the Assignee shall give the Assignor access to said wells and the derrick floor at all reasonable times and, upon request of the Assignor, shall furnish to the Assignor well samples of all cores and cuttings consecutively taken, unless the Assignor elects to take such samples itself; and, at the request of the Assignor, the Assignee shall furnish to the Assignor copies of any electrical well formation surveys made.

7. In the event that the Assignee receives a bona fide offer which it is willing to accept for the purchase of said lease acreage, or any part thereof or interest therein, from a person, firm or corporation ready, able and willing to purchase such lease acreage, part thereof or interest therein, the Assignee immediately shall give written notice thereof to the Assignor, including in said notice the name and address of such offeror, the price offered and all other terms and conditions of the offer. The Assignor, for a period of ten (10) days after the receipt of said notice, shall have the prior and preferred right and option to purchase from the Assignee the lease acreage, or the part thereof or interest therein, covered by said offer at the price and according to the terms and conditions specified in said offer; provided, that, if the Assignor fails to exercise its said right and option by giving written notice of its acceptance within ten (10) days after receipt of the above mentioned notice, the Assignee shall accept said offer and complet said sale in accordance with said offer within sixty (60) [fol. 544] days after the expiration of said period of ten (10) days; and, provided, further, that if the Assignee fails to accept said offer and complete said sale within said period of sixty (60) days, the preferred right and option of the Assignor under this paragraph shall be considered as revived, and the Assignee shall not complete said sale to said prospective purchaser unless and until said offer again has been presented to the Assignor, as hereinabove provided, and the Assignor again has failed to elect to purchase on the terms and conditions of said offer. All offers at any time made to the Assignee, its successors or assigns, for the purchase of said lease acreage, or any part

thereof or interest therein, shall be subject to all the terms and conditions of this paragraph 7.

8. In the event that the Assignee should elect to surrender, let expire, abandon or release all or any of its rights in said lease acreage, or any part thereof, the Assignee shall notify the Assignor not less than sixty (60) days in advance of such surrender, expiration, abandonment or release, and, if requested so to do by the Assignor, the Assignee immediately shall reassign such rights in said lease acreage, or such part thereof, to the Assignor. If production from any lease covered hereby ceases at any time during the primary term thereof, the Assignee promptly shall notify the Assignor thereof in writing.

9. This assignment is made subject to all the terms and the express and implied covenants and conditions of the above described leases, insofar as such leases cover the gas rights only in all horizons or strata from the surface to, but not below, the base of the Hugoton Pay Zone lying in and under the land above described, which terms, covenants and conditions the Assignee hereby assumes and agrees to perform with respect to said rights lying in and under said land; provided, that, unless the Assignee should elect to surrender, let expire, abandon or release its rights in said lease acreage and should comply with the provisions hereof relative thereto, Assignor shall make a bona fide effort to pay such delay rentals as may hereafter become due and payable under the terms of the oil and gas leases above described, insofar as said leases cover the land above described, and Assignee shall reimburse Assignor to the extent of one-half (½) of all of such rentals so paid within fifteen (15) hereof relative thereto, Assignor [fol. 545] shall make a bona fide effort to pay such delay rentals as may hereafter become due and payable under the terms of the oil and gas leases above described, insofar as said leases cover the land above described, and Assignee shall reimburse Assignor to the extent of one-half (½) of all of such rentals so paid within fifteen (15) days following the receipt of Assignor's billing therefor. Said terms, covenants and conditions, insofar as the said lease acreage is concerned, shall be binding on the Assignee,

not only in favor of the lessors and their heirs and assigns, but also in favor of the Assignor and its successors and assigns.

10. This assignment is made without warranty of any kind.

11. All notices, reports and other communications required or permitted hereunder, or desired to be given with respect to the rights or interests herein assigned or reserved, shall be deemed to have been properly given or delivered when delivered personally or sent by registered mail or telegraph, with all postage or charges fully prepaid, and addressed to the Assignor and Assignee, respectively, as follows:

Assignor:

Stanolind Oil and Gas Company
First National Building
P. O. Box 1654
Oklahoma City, Oklahoma

Assignee:

Graham-Michaelis Drilling Company
1005 East Second Street
Wichita, Kansas

12. The terms, covenants and conditions hereof shall be binding upon, and shall inure to the benefit of, the Assignor and the Assignee and their respective successors or assigns; and such terms, covenants and conditions shall be covenants running with the land above described and the lease acreage herein assigned, and with each transfer or assignment of said land or lease acreage.

To Have and to Hold said lease acreage unto the Assignee, its successors and assigns, subject to the terms, covenants and conditions hereinabove set forth.

Executed this 2nd day of January, 1957.

Stanolind Oil and Gas Company

By /s/ V. G. Hill
Its Attorney in Fact

Approved—HOL, JPW, JEI

[fol. 546]

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

BEFORE ME, the undersigned, a Notary Public within and for said County and State, on this 2nd day of January, 1957, personally appeared V. G. HILL, to me known to be the identical person who executed the within and for going instrument as Attorney in Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

/s/ CATHERINE L. WRIGHT
Notary Public

My Commission expires:

October 26, 1960

[fol. 547]
HOL/ww 5/2/56

FPC Gas Rate
Schedule No. 84
Supplement No. 86
Filing Date: 1-9-58
Effective Date: 6-26-56

Received
Jan 9 5 07 PM '58
Federal Power Commission

[Handwritten notations—Afe 18521—Contr. 34579]

STATE OF KANSAS)
) SS.
COUNTY OF MORTON)

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt and the sufficiency of which are hereby acknowledged, STANOLIND OIL AND GAS COMPANY, a corporation (hereinafter referred to as "Assignor"), hereby does bargain, sell, assign, transfer and convey unto EDWIN G. BRADLEY, his heirs and assigns (hereinafter referred to as "Assignee"), subject to the reservation of all the liquid and liquefiable hydrocarbons, as provided in paragraph 3 hereof, all its right, title and interest in and to the following described oil and gas leases, covering land situated in Morton County, State of Kansas, to wit:

Lease No. 78779:

Lessor: Forrest W. Hanna, et ux.
Lessee: Joe E. Denham
Date: February 10, 1947
Recorded: Book 13, at page 141

Lease No. 79194:

Lessor: Vivian C. Glenn, et al.
Lessee: Joe E. Denham
Date: September 3, 1947
Recorded: Book 13, at page 354

[Handwritten notations—Sp C/O 2182 June '56 (Balance of handwriting illegible)—Lses. 78779 & 79194—$2.75]

insofar as said leases cover the gas rights only in all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under the following described land in said county and state, to wit:

> The East Half (E/2) and the Southwest Quarter (SW/4) of Section Thirteen (13), Township Thirty-Two South (T32S), Range Forty-One West (R41W)

(said leases and land above described, to the extent that said leases cover the gas rights only in all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under said land, hereinafter sometimes being referred to as the "lease acreage"), subject to the following terms, covenants and conditions:

1. The lease acreage covered hereby is assigned by the Assignor and accepted by the Assignee subject to the overriding royalties, production payments, net profits obliga- [fol. 548] tions, carried working interests and other payments out of or with respect to production which are of record and with which said lease acreage is encumbered; and the Assignee hereby assumes and agrees to pay, perform or carry, as the case may be, each of said overriding royalties, production payments, net profits obligations, carried working interests and other payments out of or with respect to production, to the extent that it is or remains a burden on the lease acreage herein assigned.

2. In addition to any and all other overriding royalties, production payments and other encumbrances to which said lease acreage may be subject, the Assignor hereby excepts and reserves unto itself, its successors and assigns, an overriding royalty of one-sixteenth of seven-eighths (1/16 of 7/8) of all the gas produced and saved from all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under the land above described and lying in and under the land with which the land above described, or any part thereof, has been, or may be, pooled,

unitized or consolidated, the market value (at the well) of which shall be paid to the Assignor free of all cost and expense, except taxes on production; provided, that; in the event the leases above described do not cover all the gas mineral rights in and to all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under the land above described, then, said overriding royalty, as to the gas produced and saved from all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under said land, shall be proportionately reduced so as to be equal to that proportion of one-sixteenth of seven-eighths (1/16 of 7/8) of said gas which the interest in and to said gas mineral rights in said horizons or strata under said land covered by said leases bears to the full and undivided gas mineral estate in said horizons under said land; and, provided, further, that in the event the land above described, or any part thereof, as to the horizons from the surface to the base of the Hugoton Pay Zone lying in and under said land, is, or has been, pooled, unitized or consolidated with other land so as to form a drilling unit of approximately six hundred forty (640) acres in size, then, said overriding royalty as to the gas produced and saved from all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and [fol. 549] under the land included in said unit shall be proportionately reduced, or further proportionately reduced, if the first proviso hereof be applicable thereto, so as to be equal to that proportion of one-sixteenth of seven-eighths (1/16 of 7/8) which the acreage above described included in said unit bears to all the acreage in said unit.

3. Assignor does hereby except and reserve unto itself, its successors and assigns, all the liquid and liquefiable hydrocarbons contained in the gas produced and saved from all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under the land above described, or any part thereof, or which may be attributable thereto from any unit which may include said horizons or strata in and under said land, or any part thereof, and which said liquid and liquefiable hydrocarbons may be processed or extracted from the gas produced from said horizons through facilities designated in writing from As-

signor to Assignee; provided, that, until such time as the Assignor may notify Assignee in writing of its desire that said gas be processed and the liquid and liquefiable hydrocarbons contained therein be extracted from said gas, this reservation of the liquid and liquefiable hydrocarbons shall in no manner interfere with, prevent or prohibit the marketing of gas produced and saved from said land by Assignee. With respect to the liquid and liquefiable hydrocarbons processed and extracted from the gas produced and saved from all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under the land above described, or which may be attributable thereto from any unit including said land, or any part thereof, Assignor agrees to reimburse Assignee for all royalty paid by Assignee on said liquid and liquefiable hydrocarbons.

4. This contract shall in all respects be subject to the terms, covenants and conditions of the following prior contracts affecting said lease acreage, to wit:

(a) Gas Processing Agreement, dated June 23, 1950, by and between Stanolind Oil and Gas Company, therein referred to as "Stanolind", and Cities Service Gas Company, therein referred to as "Cities".

(b) Gas Purchase Contract, dated June 23, 1950, by and between Stanolind Oil and Gas Company, therein referred to as "Seller", and Cities Service Gas Company, therein referred to as "Buyer".

[fol. 550] 5. With respect to the overriding royalty herein excepted and reserved by the Assignor, the Assignor and the Assignee agree as follows:

(a) That said overriding royalty shall extend to any extensions or renewals of the leases above described.

(b) That oil and gas used in drilling and operations on said lease acreage and in the handling of production therefrom shall be deducted before said overriding royalty is computed.

(c) That the Assignee shall furnish to the Assignor authentic itemized monthly reports of all production

from said lease acreage, such reports to be mailed not later than the fifteenth day of the month following that for which the report is made.

6. As to any wells drilled on said lease acreage by the Assignee after the delivery of this assignment, the Assignee shall give the Assignor access to said wells and the derrick floor at all reasonable times and, upon request of the Assignor, shall furnish to the Assignor well samples of all cores and cuttings consecutively taken, unless the Assignor elects to take such samples itself; and, at the request of the Assignor, the Assignee shall furnish to the Assignor copies of any electrical well formation surveys made.

7. In the event that the Assignee should elect to surrender, let expire, abandon or release all or any of his rights in said lease acreage, or any part thereof, the Assignee shall notify the Assignor not less than sixty (60) days in advance of such surrender, expiration, abandonment or release, and, if requested so to do by the Assignor, the Assignee immediately shall reassign such rights in said lease acreage, or such part thereof, to the Assignor.

8. This assignment is made subject to all the terms and the express and implied covenants and conditions of the above described leases, insofar as such leases cover the gas rights only in all horizons or strata from the surface to the base of the Hugoton Pay Zone lying in and under the land above described, which terms, covenants and conditions the Assignee hereby assumes and agrees to perform with respect to said rights lying in and under said land; provided, that, unless the Assignee should elect to surrender, let expire, abandon or release its rights in said lease acreage and should comply with the provisions hereof relative thereto, Assignor shall make a bona fide effort to pay such delay [fol. 551] rentals as may hereafter become due and payable under the terms of the oil and gas leases above described, insofar as said leases cover the land, or any part thereof, above described, and Assignee shall reimburse Assignor to the extent of one-half ($\frac{1}{2}$) of all of such rentals so paid

within fifteen (15) days following the receipt of Assignor's billing therefor. Said terms, covenants and conditions, insofar as the said lease acreage is concerned, shall be binding on the Assignee not only in favor of the lessors and their heirs and assigns, but also in favor of the Assignor and its successors and assigns.

9. This assignment is made without warranty of any kind.

10. All notices, reports and other communications required or permitted hereunder, or desired to be given with respect to the rights or interests herein assigned or reserved, shall be deemed to have been properly given or delivered when delivered personally or sent by registered mail or telegraph, with all postage or charges fully prepaid, and addressed to the Assignor and Assignee, respectively, as follows:

Assignor:

Stanolind Oil and Gas Company
First National Building
P. O. Box 1654
Oklahoma City, Oklahoma

Assignee:

Mr. Edwin G. Bradley
420 Union National Bank Building
Wichita 2, Kansas

11. The terms, covenants and conditions hereof shall be binding upon, and shall inure to the benefit of, the Assignor and the Assignee, the successors and assigns of the Assignor and the heirs, executors, administrators, devisees, personal representatives and assigns of the Assignee; and such terms, covenants and conditions shall be covenants running with the land above described and the lease acreage herein assigned, and with each transfer or assignment of said land or lease acreage.

To Have and to Hold said lease acreage unto the Assignee, his heirs and assigns, subject to the terms, covenants and conditions hereinabove set forth.

Executed this 26th day of June, 1956.

Stanolind Oil and Gas Company

By /s/ V. G. Hill
Its Attorney in Fact

Approved—JEH, TW, HOF

[fol. 552]

State of Oklahoma)
) SS.
County of Oklahoma)

Before Me, the undersigned, a Notary Public within and for said County and State, on this 26th day of June, 1956, personally appeared V. G. Hill, to me known to be the identical person who executed the within and foregoing instrument as Attorney in Fact of Stanolind Oil and Gas Company, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of Stanolind Oil and Gas Company, a corporation, for the uses and purposes therein set forth.

In Testimony Whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ Joan Miller
Notary Public

My commission expires:

Joan Miller, Notary Public
State of Oklahoma
My Commission Expires July 16, 1957

[fol. 553]

EXHIBIT 4 TO MOTION BY PLAINTIFF FOR SUMMARY JUDGMENT

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

CERTIFICATION

I hereby certify that the attached twenty-eight (28) pages are true copies of an "ORDER APPROVING PROPOSED SETTLEMENT AND REQUIRING TARIFF REVISIONS TO BE FILED AND TERMINATING PROCEEDINGS" issued May 25, 1956, in the matter of Cities Service Gas Company, Docket Nos. G-2410 and G-9468 and Cities Service Gas Producing Company Docket Nos. G-8728 and G-9309 on file with this Commission.

This 17th day of November, 1958.

/s/ CHARLES C. BENNINGTON
NAME
TITLE Records Officer

I hereby certify that

NAME Charles C. Bennington
TITLE Records Officer

[Seal]

whose signature appears above, is official custodian of the records of the Federal Power Commission to which certification is made and was such official custodian at the time of executing the above certification.

/s/ J. H. GUTRIDE
Secretary

[fol. 554]

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, Frederick Stueck and William R. Connole.

In the Matters of	)	
	)	Docket Nos. G-
Cities Service Gas Company	)	2410 and G-9468
	)	
and	)	
	)	Docket Nos. G-
Cities Service Gas Producing Company	)	8728 and G 9309

ORDER APPROVING PROPOSED SETTLEMENT AND REQUIRING TARIFF REVISIONS TO BE FILED AND TERMINATING PROCEEDINGS

(Issued May 25, 1956)

These proceedings in Docket Nos. G-2410 and G-9468 arose from rate increases filed by Cities Service Gas Company (Cities Service). The proceeding in Docket No. G-9309 arose from a rate increase filed by Cities Service Gas Producing Company (Producing Company). The proceeding in Docket No. G-8728 concerns a general investigation instituted by the Commission, upon its own motion, of the lawfulness of Producing Company's rates. The records in the proceedings in Docket Nos. G-2410 and G-8728 have been certified to us for approval of a proposed settlement of these four proceedings, as stated in such records by Commission Staff Counsel in open hearing and agreed to by all parties to the proceedings. Upon consideration of the records, we approve the terms of the proposed settlement and we will permit the agreed upon rate increases to become effective, subject to the terms and conditions hereinafter set forth, as agreed to by the parties.

On March 22, 1954, Cities Service tendered for filing with the Commission its FPC Gas Tariff, Second Revised Volume No. 1, proposed to become effective April 23, 1954, and proposing, among other things, an annual increase in rates of $12,589,072 for sales of natural gas, subject to the jurisdiction of the Commission, based on sales for the year 1953, as adjusted.

By order issued April 22, 1954, in Docket No. G-2410, pursuant to authority contained in Sections 4 and 5 of the Natural Gas Act, the Commission, upon its own motion, among other things, suspended and deferred the use of Cities Service's FPC Gas Tariff, Second Revised Volume No. 1, excepting Original Sheets Nos. 14, 15, 16 and 17 thereof, until September 23, 1954, and until such further time thereafter as it may be made effective in the manner prescribed by the Natural Gas Act; and the Commission thereby entered upon an investigation concerning the lawfulness of the rates and charges of Cities Service.

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[fol. 555] The aforesaid Original Sheets Nos. 14, 15, 16 and 17, which set forth Rate Schedules I-1 and I-2 applicable to sales of natural gas for resale for industrial use only, were allowed to take effect as of April 23, 1954, as proposed.

On May 20, 1954, Cities Service filed Original Sheets Nos. 9-A, 9-B, 9-C and 9-D to its FPC Gas Tariff, First Revised Volume No. 1, providing a new Rate Schedule No. L-2 governing sales for resale to consumers using dual fuel heating equipment. Also on May 20, 1954, Cities Service filed Original Sheets Nos. 9-A, 9-B, 9-C and 9-D to its FPC Gas Tariff, Second Revised Volume No. 1, providing increased rates for sales under its Rate Schedule No. L-2.

Thereafter, by order issued July 22, 1954, in Docket No. G-2209, the Commission allowed these original sheets to Cities Service's FPC Gas Tariff, First Revised Volume No. 1, to become effective as of March 23, 1954; and, by said order, suspended and deferred the use of Original Sheets Nos. 9-A, 9-B, 9-C and 9-D to Cities Service's FPC Gas Tariff, Second Revised Volume No. 1, until September 23, 1954, and until such further time thereafter as they may be made effective in the manner prescribed in the Natural Gas Act.

For the purposes of this settlement it was further agreed that the revenues received by Cities Service from jurisdictional sales during the twelve months ending December 31, 1955, exceeded its cost of service attributable to such sales during that period in the amount of $3,587,613; that during the period commencing September 23, 1954, and ending April 22, 1956 the revenues received by Cities Service from jurisdictional sales exceeded its cost of service attributable to such sales in the amount of $6,300,000; and that such amount of $6,300,000 is the principal amount to be refunded under this agreement to those entitled thereto, together with interest computed in the manner hereinafter provided, all as shown on Appendices B, C and D hereto: Provided, further, That should subsequent action by this Commission or by the courts result in refunds to Cities Service of any portion of monies paid by Cities Service to its suppliers, including Producing Company, for natural gas purchased by Cities Service during the period commencing September 23, 1954, and ending April 22, 1956, Cities Service shall make further additional refunds to those entitled thereto in the manner hereinafter provided.

For the purposes of this settlement it is agreed that in arriving at the principal amount of refund of $6,300,000

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[fol. 563] to be paid by Cities Service to those entitled thereto for sales during the period commencing September 23, 1954, and ending on April 22, 1956, the cost of gas purchased by Cities Service from Phillips Petroleum Company, Harper Oil Company, Magnolia Petroleum Company, Signal Oil and Gas Company and companies involved in cases questioning the Kansas Minimum Price Orders has been computed at rates which are the subject of proceedings before this Commission or before the courts, and which have not been finally determined or fixed.

Accordingly, it was further agreed by the parties that, in the event subsequent action by this Commission or by the courts results in refunds to Cities Service of any portion of monies paid by Cities Service to these suppliers of natural gas during the period commencing September 23, 1954, and ending April 22, 1956, Cities Service shall refund such part of the amount received by it as is applicable to sales made under its F, L, C, I, and P Rate Schedules, the same to be distributed to those entitled thereto in propor-

tion to purchases from Cities Service under said rate schedules during the period commencing September 23, 1954 and ending April 22, 1956, without additional cost or liability to Cities Service.

The settlement provided that the part of the amount received by Cities Service which is to be refunded by it shall represent the proportion which the sales under its F, L, C, I, and P Rate Schedules bear to the total sales, both jurisdictional and non jurisdictional, made by Cities Service in the period involved.

The parties further agreed that no such refunds attributable to purchases prior to April 22, 1956, need be made by Cities Service until the accumulated amount of such refunds reaches $200,000, except for the final refund, which need not be made if it is less than $25,000. Refunds paid in accordance with this provision shall not bear interest.

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[fol. 564] For the purposes of this settlement it was also agreed that the interest to be paid by Cities Service on the $6,300,000 refund due to those entitled thereto shall be computed at the rate of six (6) per cent per year and upon the following assumptions:

(a) That the excess of rates and charges collected by Cities Service from each customer during each billing month commencing September 23, 1954, and continuing through April 22, 1956, shall be computed by applying against the actual volumes purchased under each applicable rate schedule in each billing month the refundable amount as stated in cents per Mcf in Appendix C hereto.

(b) That interest shall commence to run on each such calculated excess of monthly payment on the fifteenth day of the month in which payment was actually received by Cities Service.

(c) That all interest payable by Cities Service pursuant to the agreed settlement shall terminate on the date of actual payment by Cities Service to each customer of the principal amount of refund due: Provided, That Cities Service shall make all refunds of principal and interest within thirty (30) days from the date of issuance of this order of approval.

By said order issued July 22, 1954, the Commission also provided that the last-mentioned tariff sheets comprising the increased Rate Schedule No. L-2 should, for the purpose of hearing and final determination, be made a part of, and disposed of together with other matters in Docket No. G-2410.

On October 22, 1954, pursuant to appropriate motion of Cities Service, the Commission issued its order in Docket No. G-2410 making effective as of September 23, 1954, Cities Service's FPC Gas Tariff, Second Revised Volume No. 1, subject to further orders of the Commission in that proceeding.

The order issued October 22, 1954, also provided, among other things, that Cities Service shall refund to those entitled thereto any portion of the increased rates made so effective as may be found by the Commission in that proceeding not justified, with interest at the rate of 6 per cent per annum from the date of payment to Cities Service until refunded.

On May 4, 1955, Cities Service filed First Revised Sheets Nos. 12 and 16 to its FPC Gas Tariff, Second Revised Volume No. 1, providing tariff changes in Rate Schedules Nos. C-2 and I-2 in respects other than the level of rates. By order issued June 3, 1955, in Docket No. G-2410, the First Revised Sheet No. 12 was allowed to take effect as of September 23, 1954, subject to all of the terms and condi-

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[fol. 556] tions set forth in the aforesaid order issued October 22, 1954, and First Revised Sheet No. 16 was allowed to take effect as of April 23, 1954.

On September 22, 1955, Cities Service tendered for filing First Revised Sheets Nos. 4, 5, 7, 8, 9-A, 9-B, 10, 14 and 19 and Second Revised Sheets Nos. 12 and 16 to its FPC Gas Tariff, Second Revised Volume No. 1, and Second Revised Sheet No. 27 to its FPC Gas Tariff, Original Volume No. 2, each of which was proposed to become effective as of October 23, 1955.

These proposed revised tariff sheets tendered on September 22, 1955, were estimated to result in a further annual increase in rates for sales of natural gas, subject to the jurisdiction of the Commission, of about $3,963,000 above those estimated to result from the prior filing of

March 22, 1954, based on sales for the twelve-month period ending June 30, 1955.

By order issued October 13, 1955, in Docket No. G-9468, pursuant to authority contained in Sections 4 and 5 of the Natural Gas Act, the Commission, upon its own motion, among other things, suspended and deferred the use until March 23, 1956, of the aforesaid First Revised Sheets Nos. 4, 5, 7, 8, 9-A, 9-B, 10 and 19 and Second Revised Sheet No. 12 to Cities Service's FPC Gas Tariff, Second Revised Volume No. 1, and Second Revised Sheet No. 27 to Cities Service's FPC Gas Tariff, Original Volume No. 2, and until such further time thereafter as they may be made effective in the manner prescribed by the Natural Gas Act; and the Commission thereby entered upon an investigation concerning the lawfulness of the rates and charges proposed in said Revised Tariff Sheets.

The aforesaid First Revised Sheet No. 14 and Second Revised Sheet No. 16 to Cities Service's FPC Gas Tariff, Second Revised Volume No. 1, pertaining to rate schedules governing sales of natural gas for resale for industrial use only were allowed to take effect as of October 23, 1955, as proposed.

Cities Service, pursuant to Section 4 (e) of the Natural Gas Act, filed on March 9, 1956, a motion, as amended by a further filing on April 30, 1956, to effectuate, as of April 23, 1956, those changes in rates, charges, classifications and services proposed in the aforesaid filing of September 22, 1955, which are the subject of proceedings in Docket No. G-9468. The Commission has not yet taken any action on this amended motion.

By order issued April 8, 1955, in Docket No. G-8728, the Commission, upon its own motion, pursuant to the authority contained in Section 5 of the Natural Gas Act, entered upon an investigation of the lawfulness of the rates and charges demanded and collected by the Cities Service Gas Produc-

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[fol. 557] ing Company, a wholly-owned subsidiary of Cities Service, for the transportation or sale of natural gas, subject to the jurisdiction of the Commission.

On August 8, 1955, Producing Company filed with the Commission Supplement No. 1 to its FPC Gas Rate Schedule No. 1 proposing increased rates for sales of natural

gas to Cities Service, subject to the jurisdiction of the Commission, which were proposed to become effective as of September 10, 1955. It was estimated that the proposed change in rates would result in increased payments by Cities Service of approximately $885,476 per year.

By order issued September 9, 1955, in Docket No. G-9309, pursuant to authority contained in Section 4 of the Natural Gas Act, the Commission, upon its own motion, among other things, suspended and deferred the use of the aforesaid Supplement No. 1 to Producing Company's FPC Gas Rate Schedule No. 1 until October 10, 1955, and until such further time as it may be made effective in the manner prescribed by the Act.

On November 7, 1955, pursuant to appropriate motion of Producing Company, the Commission issued its order in Docket No. G-9309 making effective as of October 10, 1955, Supplement No. 1 to Producing Company's FPC Gas Rate Schedule No. 1, subject to further orders of the Commission in that proceeding. The order issued November 7, 1955, also provided, among other things, that Producing Company shall refund to those entitled thereto any portion of the increased rates so made effective as may be found by the Commission in that proceeding not justified, with interest at the rate of 6 per cent per annum from the date of payment to Producing Company until refunded.

Hearings in the proceedings in Docket No. G-2410 commenced on July 26, 1954, and have continued intermittently since that date, with necessary recesses. During this period, some sixty-two days of hearings have been held, but the hearings have not been concluded.

Hearings in the proceedings in Docket No. G-8728 were commenced on June 27, 1955, and have continued intermittently since that date, with necessary recesses.

Pursuant to request of Staff Counsel, and with concurrence of all parties, a conference among the parties to these proceedings was held on April 17 through 20, 1956, and on May 1 through 8, 1956, respecting the possibility of agreement on or simplification of the issues in the afore-mentioned four proceedings. On May 8, 1956, final agreement was reached by all parties to the proceedings respecting

the matters and issues related to the several proceedings in Docket Nos. G-2410, G-8728, G-9309 and G-9468.

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[fol. 558] The Commission's Staff computed a net investment rate base for Cities Service for the year 1955, as adjusted, of $124,134,278, including an allowance of $3,614,939 for working capital computed in recognition of the availability of accruals for Federal taxes on income. Allowing a 6 per cent return upon this rate base, the Staff developed a total cost of service for Cities Service of $59,933,270 for the year ended December 31, 1955. Of this total, $41,021,632 was allocated by the Staff to jurisdictional sales. This cost of service estimate was presented to all parties to these proceedings and an agreement was reached that rates which would yield revenues of $39,851,938 from Cities Service's sales in interstate commerce for resale, exclusive of sales under Rate Schedule X-5, based upon operations for the year 1955, as adjusted (Appendix A hereto), would be fair and reasonable and acceptable to all parties, subject to the terms and conditions of the settlement hereinafter stated.

It was agreed that Cities Service will, as soon as possible after the issuance of this order, file with the Commission revised rate schedules embodying the rates hereinafter set forth. These revised schedules are to be effective as of April 23, 1956, and shall supersede the increased schedules of rates and charges set forth in Cities Service's FPC Gas Tariff, Second Revised Volume No. 1, as originally filed on March 22, 1954, and amended and supplemented by the filing of Original Sheets Nos. 9-A, 9-B, 9-C and 9-D thereto on May 20, 1954. It was also agreed that Cities Service shall file at the same time such other revised tariff sheets as may be necessary to provide that "a large commercial or industrial consumer" for the purposes of the tariff be defined as "one whose use at a single address or location is, or is estimated to be, 3,000 Mcf or more in any one billing month during a period consisting of the twelve billing months of January through December."

The rate levels of Cities Service to be embodied in the proposed revised schedules to be made effective as of April 23, 1956, as agreed upon by all parties, are as follows:

	Rate per Mcf at 14.65 psia
Rate Schedule F-1	
Base	16.4¢
Excess	24.55¢
Rate Schedule F-2	
Base	19.0¢
Excess	28.45¢
Rate Schedule L-2	
Base	19.0¢
Excess	23.73¢

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Rate Schedule C-1	15.55¢
Rate Schedule C-2	17.05¢
Rate Schedule I-1	13.55¢
Rate Schedule I-2	15.05¢
Rate Schedule E	
Minimum Months	$25.00
Balance Mcf	40.00¢
Rate Schedule P	
Billing Demand	$ 1.00
Commodity	
Up to Maximum Obligation	14.55¢
Excess	40.00¢
Rate Schedule X-5	A price equal to the price paid by Cities Service to Consolidated Gas Utilities Corporation at the Grady County, Oklahoma delivery point, plus three cents per thousand cubic feet measured at 16.4 pounds per square inch absolute.

These rates would produce an estimated increase of $10,208,002 in revenues from Cities Service's jurisdictional sales over the estimated revenues which would be produced

under the rates in effect prior to April 23, 1954, as shown on Appendix E hereto.

For the purpose of this settlement, it was stipulated and agreed that Cities Service will not within one year from April 21, 1956, file any general increase in rates unless within such one year period plus the period of six months immediately thereafter it has incurred, or will incur within six months from date of filing, increased costs, the aggregate annual effect of which results in a deficiency of $1,000,000 or more from jurisdictional business.

For the purpose of determining the appropriateness of such filing under the terms of the settlement, it was also agreed that the cost of service allocated to jurisdictional business in this settlement shall be adjusted to reflect all increased costs on an annual basis subject to the following:

1. Increases in the cost of purchased gas other than gas purchased from Cities Service Gas Producing Company shall be limited to an increase in the weighted average unit cost of such purchased gas above the weighted average unit cost used in this settlement cost of service.

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[fol. 560] 2. No increase in the unit cost of gas purchased from Cities Service Gas Producing Company as used in this settlement cost of service shall be included for the purpose of making such computation.

3. Increases in taxes due to changes in tax rates shall be limited to the increase in tax rates above the level used in this settlement cost of service.

4. Increases due to higher wage and salary rates shall be limited to any increase in salary and wage rates above the level of such rates used in this settlement cost of service.

5. The allowance for depreciation and amortization and for return shall be computed at the rates included in this settlement cost of service.

6. The rate base shall be computed in the same manner as computed in this settlement agreement.

7. All methods of cost determination and cost allocation as between jurisdictional and non-jurisdictional sales used

in this settlement cost of service, as reflected by the Commission Staff working papers supporting Appendix A hereto, shall be followed.

It was agreed that the cost of service allocated to jurisdictional business thus determined shall be compared with the revenues from jurisdictional business used in this settlement adjusted for any increases or decreases which have occurred, or will occur, within such period of eighteen months after April 21, 1956, and if such adjusted cost of service exceeds the adjusted revenues by $1,000,000 or more, then Cities Service will be deemed to be entitled to file for a general increase in rates under this stipulation.

It was further understood and agreed by the parties that in the event Cities Service deems it is justified in filing for a rate increase pursuant to the foregoing provisions of the settlement, Cities Service will notify all parties hereto simultaneously with the filing and indicate in such notification the justification for such filing pursuant to the settlement agreement. However, it was also agreed that, in any filing with the Commission, Cities Service will not be restricted to the methods used in this settlement agreement in computing Cities Service's cost of service, allocation, and revenue deficiency.

In the event Cities Service files before April 21, 1957, an increase in its "I" rates, it agreed that it will not propose that such rates be made effective prior to October 23, 1956, or 60 days from the date of filing, whichever is later.

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[fol. 561] For the purpose of this part of the settlement, it was agreed that an increase in the "I" Schedules would be considered as a general increase.

In arriving at the total cost of service of $58,929,540, as shown in Appendix A hereto, the cost of gas purchased and estimated to be purchased by Cities Service from Phillips Petroleum Company, Harper Oil Company, Magnolia Petroleum Company, Signal Oil and Gas Company and companies involved in cases questioning the Kansas Minimum Price Orders was computed at rates which are the subject of proceedings before this Commission or before the courts, and which have not been finally determined or fixed.

Accordingly, it was further agreed by the parties that, in the event subsequent action by this Commission or the

courts results in refunds to Cities Service of any portion of monies paid by Cities Service to these suppliers of natural gas during the period the rates to be made effective pursuant to this order shall be in effect, Cities Service shall refund such part of the amount received by it as is applicable to sales made under its F, L, C, I, and P Rate Schedules, the same to be distributed to those entitled thereto in proportion to purchases from Cities Service under said rate schedules during the period from and after April 23, 1956, without additional cost or liability to Cities Service.

The part of the amount received by Cities Service which is to be refunded by it shall represent the proportion which the sales made under its F, L, C, I and P Rate Schedules bear to the total sales, both jurisdictional and non-jurisdictional, made by Cities Service in the period involved: Provided, that within thirty (30) days from the date of the making of such refunds, Cities Service shall file with the Commission revised schedules providing reduced rates reflecting the future reduction in cost of gas purchased from its said suppliers; And Provided, further, that in the making of the refunds here contemplated Cities Service shall include all monies accruing to it by reason of the reduced cost of gas purchased from said suppliers during the period beginning April 23, 1956 and ending with the effective date of the revised rate schedules to be filed pursuant to this provision of the agreement.

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[fol. 562] It was further agreed by the parties that no such refunds need be made by Cities Service until the accumulated amount to be refunded totals $200,000, except for the final refund, which need not be made if it is less than $25,000. The parties also agreed that Cities Service should not be required to pay any interest on these future refunds.

For the purposes of this settlement it was also agreed by the parties that Cities Service's total overall cost of service, both jurisdictional and non-jurisdictional, for the twelve months ending December 31, 1955, without pro forma adjustments, was $58,721,507; and that Cities Service's cost of service for jurisdictional sales during that period was $39,651,938, exclusive of sales under Rate Schedule X-5, as shown on Appendix B hereto.

In view of the settlement reached herein in the proceedings in Docket Nos. G-2410 and G-9468 respecting rates of Cities Service and the fact that substantially all of the natural gas produced by Producing Company is sold to Cities Service, it was agreed by the parties that further proceedings in Docket Nos. G-8728 and G-9309 are neither required nor necessary, and that the proceedings in Docket Nos. G-8728 and G-9309 should be now terminated and that the rates filed by Producing Company on August 8, 1955, should be continued in effect without suspension and the undertaking discharged: Provided, however, That in the event the Commission's order issued July 15, 1955, in Docket No. G-5788 be finally sustained by the Courts, Cities Service shall refund to those entitled thereto the portion of any refunds made to it by the Producing Company, in the manner hereinbefore stated, but only for the period from September 23, 1954 through October 9, 1955.

For the purposes of this settlement it was further agreed and recognized that the termination of the proceedings in Docket No. G-9309 as proposed would not provide a determination of the reasonableness of the rates of Producing Company. Accordingly, it was further agreed by the parties that the termination of the proceedings in Docket No. G-9309 under these circumstances shall not be construed as a recognition that the rates of Producing Company which are the subject of such proceeding are just and reasonable or otherwise.

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[fol. 565] Staff Counsel, with the concurrence of all parties, moved for omission of the intermediate decision procedure in these proceedings and requested the Commission to forthwith render the final decision herein. This motion is deemed to have been granted in accordance with the provisions of Section 1.30 (c) of the Commission's Rules of Practice and Procedure [18 CFR 1.30(c)].

The Commission *finds*:

(1) The proposed settlement of these rate proceedings on the basis heretofore described, subject to the terms and conditions hereinafter ordered, is appropriate and in the public interest in carrying out the provisions of the Natural Gas Act and should be

approved and made effective as hereinafter provided and ordered.

(2) In the event subsequent action by the Commission or the courts results in refunds to Cities Service of any portion of monies paid by Cities Service for gas purchased from Phillips Petroleum Company, Harper Oil Company, Magnolia Petroleum Company, Signal Oil and Gas Company, or any of the companies involved in cases questioning the so-called Kansas Minimum Price Orders during the period the rates to be made effective pursuant to this order shall be in effect, Cities Service should refund such part of the amount received by it as is applicable to sales made under its F, L, C, I and P Rate Schedules, and the same should be distributed to those entitled thereto in proportion to purchases from Cities Service under said rate schedules during the period from and after April 23, 1956, without additional cost or liability to Cities Service. The part of the amount received by Cities Service which should be refunded by it shall represent the proportion which the sales made under its F, L, C, I and P Rate Schedules bear to the total sales, both jurisdictional and non-jurisdictional, made by Cities Service in the period involved. Moreover, within thirty (30) days from the date of the making of the refunds contemplated by this paragraph, Cities Service should be required to file schedules providing reduced rates reflecting the future reduction in the cost of gas purchased from its said suppliers. Furthermore, in the making of the refunds contemplated by this paragraph, Cities Service should be required to include all monies

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[fol. 566] accruing to it by reason of the reduced cost of gas purchased from the above-mentioned suppliers during the period beginning April 23, 1956, and ending with the effective date of the revised rate schedules to be filed as here provided.

(3) In the event subsequent action by this Commission or the courts results in refunds to Cities Service of any portion of monies paid by Cities Service for gas

purchased from Phillips Petroleum Company, Harper Oil Company, Magnolia Petroleum Company, Signal Oil and Gas Company, or any of the companies involved in cases questioning the so-called Kansas Minimum Price Orders during the period commencing September 23, 1954, and ending April 22, 1956, Cities Service should refund such part of the amount received by it as is applicable to sales made under its F, L, C, I and P Rate Schedules, and the same should be distributed to those entitled thereto in proportion to purchases from Cities Service under said rate schedules during the period commencing September 23, 1954, and ending April 22, 1956, without additional cost or liability to Cities Service. The part of the amount received by Cities Service which should be refunded by it shall represent the proportion which the sales made under its F, L, C, I and P Rate Schedules bear to the total sales, both jurisdictional and non-jurisdictional, made by Cities Service in the period involved.

(4) The refunds by Cities Service contemplated by paragraphs (2) and (3) above should not be required to be made by Cities Service until the accumulated amount of such refunds reaches $200,000, except for the final refund, which Cities Service should not be required to make if the total thereof is less than $25,000. Furthermore, the refunds by Cities Service contemplated by this paragraph and paragraphs (2) and (3) above should not bear interest.

(5) In the event the Commission's order issued July 15, 1955, in Docket No. G-5788, respecting rates of Producing Company, be finally sustained by the courts, Cities Service should refund to those entitled thereto a portion of any refunds made to it by the Producing Company for the period commencing September 23, 1954, and continuing through October 9, 1955, which refunds by Cities Service shall be determined in the manner described in paragraph (3) above.

[fol. 567] The Commission *orders*:

(A) The increased rates and charges provided in Cities Service's aforementioned filings of March 22, 1954, in Docket No. G-2410, and of May 20, 1954, in Docket No. G-2209, and of September 22, 1955 in Docket No. G-9468, be and the same are hereby disallowed.

(B) Within ten (10) days after the date of issuance of this order, Cities Service shall file, in a form satisfactory to the Commission, revised tariff sheets providing the rates and charges heretofore stated at pages 5 and 6 hereof, to be effective as of April 23, 1956, in supersession of the rates and charges heretofore effective under Cities Service's undertaking to refund in Docket No. G-2410 if so ordered.

(C) Cities Service shall refund, within thirty (30) days after the date of issuance of this order, a total principal amount of $6,299,845, and to each of its several customers named in Appendix D hereto the principal amounts shown in said Appendix D to be refunded to each customer, plus interest computed in the manner hereinbefore stated at page 11 of this order. And Cities Service, within forty-five (45) days after the date of issuance of this order, shall report to the Commission, in writing and under oath, the amount of the refund made to each customer, showing separately the amount of principal and interest so paid, and it shall serve a copy of such report upon each of the customers receiving a refund.

(D) In the event subsequent action by this Commission or by the courts results in refunds to Cities Service of any portion of monies paid by Cities Service for gas purchased from Phillips Petroleum Company, Harper Oil Company, Magnolia Petroleum Company, Signal Oil and Gas Company, or any of the companies involved in cases questioning the so-called Kansas Minimum Price Orders during the period the rates to be made effective pursuant to paragraph (B) above shall be in effect, Cities Service shall refund such part of the amount re-

ceived by it as is applicable to sales made under its F, L, C, I and P Rate Schedules, and the same shall be distributed to those entitled thereto in proportion to purchases from Cities Service under said rate schedules during the period on and after April 23, 1956, without additional cost or liability to Cities Service. The part of the amount received by Cities Service to be so refunded shall represent the proportion which the sales made under its F, L, C, I and P Rate Schedules bear to the total sales, both jurisdictional and non-jurisdictional, made by Cities Service in the period involved. Within thirty (30) days from the date of the making of the refunds provided in this paragraph, Cities Service shall file, in a form satisfactory to the Commission, schedules providing reduced rates and charges re-

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[fol. 568] flecting the future reduction in the cost of gas purchased by Cities Service from its suppliers. In the making of the refunds provided in this paragraph, Cities Service shall include all monies accruing to it by reason of the reduced cost of gas purchased from the above-mentioned suppliers during the period beginning April 23, 1956, and ending with the effective date of the revised rate schedules to be filed pursuant to this paragraph.

(E) In the event subsequent action by this Commission or by the courts results in refunds to Cities Service of any portion of monies paid by Cities Service for gas purchased from Phillips Petroleum Company, Harper Oil Company, Magnolia Petroleum Company, Signal Oil and Gas Company, or any of the companies involved in cases questioning the so-called Kansas Minimum Price Orders during the period commencing September 23, 1954, and ending April 22, 1956, Cities Service shall refund such part of the amount received by it as is applicable to sales made under its F, L, C, I and P Rate Schedules, and the same shall be distributed to those entitled thereto in proportion to purchases from Cities Ser-

vice under said rate schedules during the period commencing September 23, 1954, and ending April 22, 1956, without additional cost or liability to Cities Service. The part of the amount received by Cities Service to be so refunded shall represent the proportion which the sales made under its F, L, C, I and P Rate Schedules bear to the total sales, both jurisdictional and non-jurisdictional, made by Cities Service in the per. l involved.

(F) No refunds need be made by Cities Service pursuant to the provisions of paragraph (D) or (E) above until the accumulated refundable amount reaches $200,000, except for the final refund, which need not be made by Cities Service if the total amount refundable is less than $25,000. Refunds paid in accordance with this paragraph and paragraphs (D) and (E) above shall not bear interest.

(G) Within ten (10) days after the date of issuance of this order, Cities Service shall file, in a form satisfactory to the Commission, such other revised tariff sheets as may be necessary to provide that "a large commercial or industrial consumer" for the purposes of Cities Service's tariff shall be defined as "one whose use at a single address or location is, or is estimated to be, 3,000 Mcf or more in any one billing month during a period consisting of the twelve billing months of January through December."

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[fol. 569] (H) In the event the Commission's order issued July 15, 1955, in Docket No. G-5788, respecting rates of Producing Company, be finally sustained by the courts, Cities Service shall refund to those entitled thereto a portion of any refunds made to it by the Producing Company for the period commencing September 23, 1954, and continuing through October 9, 1955, which refunds by Cities Service shall be determined in the manner provided in paragraph (E) above.

(I) Cities Service, within fifteen (15) days after the date of the making of refunds pursuant to paragraphs (D), (E), (F) or (H) above, shall report to the Commission, in writing and under oath, the amount of the refund made to each customer, showing the basis upon which it was computed, and it shall serve a copy of such report upon each of the customers receiving a refund.

(J) Upon compliance by Cities Service with the terms and conditions of this order the proceedings in Docket Nos. G-2410, G-8728 and G-9309 shall be terminated and the proceedings in Docket No. G-9468 shall be dismissed.

(K) This order is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceedings now pending or hereafter instituted against Cities' Service.

By the Commission.

/s/ LEON M. FUQUAY
Leon M. Fuquay,
Secretary.

Docket No. G-9468

Appendix A
Sheet 1 of 3

CITIES SERVICE GAS COMPANY

Allocation of Cost of Service For Future Purposes

Year 1972

D

	Particulars (a)	Gas Supply (b)	Gathering (c)	Transmission Commodity (d)	Transmission Demand (e)	Storage Commodity (f)	Storage Demand (g)	Customers Accounting & Collecting (h)	Rate Case Expense (i)	Total Cost of Service (j)
	Field Sales									
1	Direct Sales	$ 5,582	$ 896	$ -	$ -	$ -	$ -	$ 2,065	$ -	$ 8,503
	Transmission									
2	Interstate	18,726,100	2,872,052	7,751,405	8,314,994	686,270	871,960	509,157	120,000	39,851,938
3	Intrastate	5,504	847	2,300	4,433	203	465	1,377	-	15,149
4	Total Resale	18,731,604	2,872,899	7,753,705	8,319,427	686,473	872,425	510,534	120,000	39,867,087
5	Direct Sales	9,194,032	1,410,107	3,805,740	511,477	336,941	53,636	338,995	-	15,650,948
6	Total Transmission	27,925,636	4,283,006	11,559,445	8,830,904	1,023,414	926,061	849,529	120,000	55,518,035
7	Total Sales	27,931,218	4,283,862	11,559,445	8,830,904	1,023,414	926,061	851,594	120,000	55,526,538
8	Revenues - Credited	2,141,731	319,981	515,071	369,940	14,643	18,643	22,993	-	3,403,002
9	Total Cost of Service	$30,072,989	$4,603,843	$12,074,516	$ 9,200,844	$1,038,057	$944,704	$874,587	$120,000	$58,929,540
	Summary of Jurisdictional Deficiency									
10	Interstate Sales for Resale			$39,851,938						
11	Deduct Revenues under old Rates		30,366,628							
12	Less X-5		(714,690)							
13				39,851,938						
14	Deficiency			$20,220,600						

[fol. 570]

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Description	Total	Gas Supply	FUNCTION Gathering	Storage	Transmission	Distribution	Rate Case Expense
Operating Revenue Deductions							
Operating Expenses:							
Production and Gathering Expenses	$ 618,699	$ -	$ 618,699	$ -	$ -	$ -	$ -
Purchased Gas Cost	31,244,937	31,244,937	-	-	-	-	-
Purchased Gas Expenses	343,724	343,724	-	-	-	-	-
Gas Withdrawn From Underground Storage-Cr.	2,108,930	2,108,930	-	-	-	-	-
Gas Delivered to Underground Storage-Cr.	(2,443,307)	(2,443,307)	-	-	-	-	-
Net Gas Delivered to Underground Storage	(340,377)						
Gas Used In Utility Operations-Cr.	(1,314,361)	(1,314,361)	-	-	-	-	-
Underground Storage Expenses	317,588	-	-	317,588	-	-	-
Transmission Expenses	5,244,438	-	-	-	5,244,438	-	-
Distribution Expenses	310,833	-	-	-	-	310,833	-
Customers Accounting and Collecting	188,204	-	-	-	-	188,204	-
Sales Promotion Expenses	81,364	-	-	-	81,364	-	-
Administrative and General Expense	2,237,937	125,324	204,100	85,957	1,630,114	192,462	-
Rate Case Expense	180,000	-	-	-	-	-	180,000
Total Operating Expenses	39,046,876	30,099,247	822,799	403,465	6,955,916	685,499	180,000
Depreciation Depletion and Amortization	4,972,309	-	991,535	288,833	3,636,387	61,414	-
Federal Income Taxes	5,031,553	3,609	995,559	307,083	3,491,098	34,250	-
State Income Taxes	80,419	58	15,912	8,104	55,798	547	-
Taxes Other Than Income	2,425,263	6,734	391,536	146,833	1,848,492	33,667	-
Gross Operating Revenue Deductions	51,556,420	30,069,648	3,217,301	1,348,898	15,985,816	815,357	180,000
Deduct:							
Miscellaneous Operating Revenues	70,881	-	12,603	3,055	52,709	1,714	-
Net Operating Revenue Deductions	51,485,539	30,069,648	3,204,698	1,344,843	15,933,107	813,643	180,000
Add:							
Return @ 6% of Rate Base	7,444,001	1,361	1,322,185	638,318	5,348,823	60,944	-
Total Cost of Service	$59,229,540	$30,071,009	$4,526,883	$1,983,161	$21,281,930	$ 874,587	$180,000

[fol. 571]

Docket No. G-9468

Appendix A
Sheet 3 of 3

CITIES SERVICE GAS COMPANY

Summary of Rate Base

Cost of Service Year 1955 - Pro Forma

[fol. 572]

Description	Total	Gas Supply	FUNCTION Gathering	Storage	Transmission	Distribution	General	Intangible
Net Plant Investment: (Average of Balances at Beginning and End of Year 1955)								
Gas Plant In Service	$163,480,651	$ -	$26,370,957	$ 9,862,286	$121,932,232	$1,609,675	$3,429,116	$276,385
Gas Plant Held For Future Use	53,794	-	53,794	-	-	-	-	-
Sub-Total	163,534,445	-	26,424,751	9,862,286	121,932,232	1,609,675	3,429,116	276,385
Less:								
Reserve for Depreciation, Depletion & Amortization								
Gas Plant In Service	43,353,434	-	3,646,582	1,023,469	37,159,558	528,446	932,967	62,412
Gas Plant Held For Future Use	35,009	-	35,009	-	-	-	-	-
Retirement Work In Progress	(801,871)	-	(30,755)	(18,613)	(713,903)	(5,686)	(32,914)	-
	42,586,572	-	3,650,836	1,004,856	36,445,655	522,760	900,053	62,412
Net Utility Plant	120,947,873	-	22,773,915	8,857,430	85,486,577	1,086,915	2,529,063	213,973
Distribution of General and Intangible	-	-	452,875	169,245	2,093,211	27,705	(2,529,063)	(213,973)
Net Utility Plant - By Functions	120,947,873	-	23,226,790	9,026,675	87,579,788	1,114,620	-	-
Less Contributions In and Of Construction	428,534	-	43,131	165	180,731	204,507	-	-
Net Plant Investment (Average)	$120,519,339	$ -	$23,183,659	$ 9,026,510	$ 87,399,057	$ 910,113	$ -	$ -
Working Capital:								
Cash Operating Expenses	$ 1,005,367	$58,022	$ 93,094	$ 47,341	$ 721,082	$ 85,828	$ -	$ -
Materials and Supplies	3,973,574	-	656,037	245,169	3,032,235	40,133	-	-
Prepayments	202,385	-	33,414	12,487	154,440	2,044	-	-
Gas In Underground Storage	1,636,331	-	-	1,636,331	-	-	-	-
Gross Working Capital	6,817,897	58,022	782,545	1,941,728	3,907,697	127,865	-	-
Less:								
6% of Federal Income Taxes Included in Cost of Service	(3,270,299)	(2,346)	(647,113)	(389,781)	(2,269,210)	(22,249)	-	-
Net Working Capital	$ 3,547,598	$55,676	$ 135,432	$ 1,612,137	$ 1,638,487	$ 105,616	$ -	$ -
Total Rate Base	$124,066,687	$55,676	$23,319,091	$10,638,647	$ 89,037,544	$1,015,729	$ -	$ -
Return @ 6% As Shown in Cost of Service	$ 7,444,001	$ 3,341	$ 1,399,145	$ 638,318	$ 5,348,823	$ 60,944	$ -	$ -

Allocation of Cost of Service For Refund Purposes

Year 1955

	Particulars (a)	Gas Supply (b)	Gathering (c)	Transmission Commodity (d)	Transmission Demand (e)	Storage Commodity (f)	Storage Demand (g)	Customers Accounting & Collecting (h)	Rate Case Expense (i)	Total Cost of Service (j)
	Field Sales									
1	Direct Sales	$ 5,641	$ 840	$ -	$ -	$ -	$ -	$ 2,065	$ -	$ 8,546
	Transmission									
2	Interstate	18,927,772	2,819,315	7,605,480	8,142,461	677,385	859,722	498,008	121,795	39,651,938
3	Intrastate	5,584	832	2,244	4,334	200	458	1,347	-	14,999
4	Total Resale	18,933,356	2,820,147	7,607,724	8,146,795	677,585	860,180	499,355	121,795	39,666,937
5	Direct Sales	2,293,068	1,387,702	3,743,511	500,869	333,417	52,884	331,571	-	15,643,022
6	Total Transmission	28,226,424	4,207,849	11,351,235	8,647,664	1,011,002	913,064	830,926	121,795	55,309,959
7	Total Sales	28,232,065	4,208,689	11,351,235	8,647,664	1,011,002	913,064	832,991	121,795	55,318,505
8	Revenues - Credited	2,141,731	319,981	515,071	369,940	14,643	18,643	22,993	-	3,403,002
9	Total Cost of Service	$30,373,796	$4,528,670	$11,866,306	$9,017,604	$1,025,645	$931,707	$ 855,984	$121,795	$58,721,507

Summary of Jurisdictional Deficiency

10	Interstate Sales for Resale		39,651,938	Revenues under G-2410 Rates: $43,239,551
11	Deduct Revenues under old Rates	30,366,608		Cost of Service: 39,651,938
12	Less X-5	(724,664)		
13			39,651,938	1955 Indicated Refund: $ 3,587,613
14	Deficiency		$10,000,000	Refund October 1954 Thru April 1956: $ 6,300,000

Docket No. G-2410

Appendix A
Sheet 2 of 3

[fol. 573]

[fol. 574]

CITIES SERVICE GAS COMPANY

Cost of Service

For The 12 Months Ended December 31, 1955

Description	Total	Gas Supply	FUNCTION: Gathering	Storage	Transmission	Distribution	Rate Case Expense
Operating Revenue Deductions							
Operating Expenses:							
Production and Gathering Expenses	$ 610,824	$ -	$ 610,824	$ -	$ -	$ -	$ -
Purchased Gas Cost	31,567,642	31,567,642	-	-	-	-	-
Purchased Gas Expenses	338,846	338,846	-	-	-	-	-
Gas Withdrawn From Underground Storage-Dr.	2,153,009	2,153,009	-	-	-	-	-
Gas Delivered to Underground Storage - Cr.	(2,305,124)	(2,305,124)	-	-	-	-	-
Net Gas Delivered to Underground Storage	(152,115)						
Gas Used In Utility Operations-Cr.	(1,314,361)	(1,314,361)	-	-	-	-	-
Underground Storage Expenses	314,139	-	-	314,139	-	-	-
Transmission Expenses	5,179,818	-	-	-	5,179,818	-	-
Distribution Expenses	306,403	-	-	-	-	306,403	-
Customers Accounting and Collecting	179,352	-	-	-	-	179,352	-
Sales Promotion Expenses	81,089	-	-	-	81,089	-	-
Administrative and General Expense	8,150,301	180,417	196,107	88,578	1,966,879	188,986	-
Rate Case Expense	180,000	-	-	-	-	-	180,000
Total Operating Expenses	39,181,938	30,360,489	806,931	396,711	6,887,180	670,681	180,000
Depreciation, Depletion and Amortization	4,972,309	-	991,335	488,833	3,636,387	61,414	-
Federal Income Taxes	4,707,087	3,513	940,488	488,307	3,242,965	30,918	988
State Income Taxes	75,233	56	15,091	7,809	51,838	494	15
Taxes Other Than Income Taxes	2,485,863	6,549	391,709	146,910	1,846,609	93,415	-
Gross Operating Revenue Deductions	51,361,824	30,370,547	3,145,739	1,388,566	15,605,113	796,988	180,937
Deduct:							
Miscellaneous Operating Revenues	70,881	-	18,603	1,855	50,709	1,714	-
Net Operating Revenue Deductions	51,290,943	30,370,547	3,133,136	1,386,711	15,558,404	795,808	180,937
Add:							
Return @ 6% of Rate Base	7,430,564	1,849	1,395,534	638,641	5,331,906	60,776	898
Total Cost of Service	$58,721,507	$30,373,796	$4,528,670	$1,977,352	$20,890,310	$855,984	$181,835

Docket No. G-2410

Appendix B
Sheet 3 of 3

CITIES SERVICE GAS COMPANY

Summary of Rate Base

Cost of Service

For The 12 Months Ended December 31, 1955

Description	Total	Gas Supply	FUNCTION Gathering	Storage	Transmission	Distribution	Rate Case Expense
Net Plant Investment - Average (See Detail Set Forth in Summary of Rate Base in Docket No. G-9468, Appendix A)	$120,519,330	$ -	$23,183,659	$ 9,026,510	$87,399,057	$ 910,113	$ -
Working Capital							
Cash Operating Expenses	998,378	56,799	91,115	46,697	704,932	83,835	15,000
Materials and Supplies	3,973,574	-	656,037	245,170	3,032,234	40,133	-
Prepayments	202,395	-	33,414	12,487	154,440	2,044	-
Gas In Underground Storage	1,679,381	-	-	1,679,381	-	-	-
Gross Working Capital	6,853,718	56,799	780,566	1,983,735	3,891,606	126,012	15,000
Less: 75% of Federal Income Taxes Included in Cost of Service	(3,530,315)	(2,635)	(705,346)	(366,230)	(2,432,224)	(21,188)	(692)
Net Working Capital	$ 3,323,403	$ 54,164	$ 75,220	$ 1,617,505	$1,459,382	$ 102,824	$14,308
Total Rate Base	$123,842,742	$ 54,164	$23,258,879	$ 10,644,015	$88,858,439	$ 1,012,937	$14,308
Return @ 6% As Shown In Cost of Service	$ 7,430,564	$ 3,249	$ 1,395,533	$ 638,641	$ 5,331,506	$ 60,776	$ 858

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Docket [illegible]

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[fol. 575]

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Appendix C
Sheet 2 of 2

CITIES SERVICE GAS COMPANY

Refund Unit Calculations

Rate Schedule	Volumes - Mcf @ 14.65 Psia	Refund Amount	Refund Per Mcf ¢
Total All Schedules	327,117,818	$6,300,000	
I-1	5,345,493		
I-2	71,274,981		
Sub Total	76,620,474	599,938	0.7830
Balance	250,497,344	$5,700,062	-
P-Billing Demands	[529,361]	185,276	35.00
1st Block	15,489,857	77,449	0.50
Excess	322,708	-	-
Sub Total	15,812,565	262,725	-
Balance	234,684,779	$5,437,337	-
E	89,542	-	-
X-5	9,481,145	-	-
Sub Total	9,570,687	-	-
Balance	225,114,092	$5,437,337	2.4153

CITIES SERVICE GAS COMPANY

Distribution of Refund by Customers

Refund Period - Sept. 23, 1954 to April 22, 1956

Customer	Volumes @ 14.65 Psia	Amount of Refund
Gas Service Company	255,131,413	$5,029,121
Altamount, Kan., City of	64,429	1,556
American Gas Co.	2,275,698	36,282
Iola, Kan., City of	505,136	12,201
Baxter Springs Gas Co.	613,043	14,807
Central West Utilities Co.	738,357	17,834
Garnet, Kan., City of	419,681	10,137
Howard, Kan., City of	156,682	3,663
Osage, Kan., City of	257,863	6,228
Sylvia, Kan., City of	85,964	2,076
Commercial Gas Pl. Co.	409,911	9,901
Gault, Ross	51,375	1,241
Haucke Pipeline Co.	222,387	5,371
Kansas Pwr. & Lt. Co.	8,844,810	193,025
Kansas Pub. Serv. Co.	4,550,445	99,087
Abbyville, Kan., City of	1,788	43
Eastern Kansas Gas	62,021	1,184
Missouri Pub. Serv. Co.	8,428,623	183,203
Severy Gas Co.	106,736	2,578
S. E. Kansas Gas Co.	178,564	4,313
Union Gas System, Inc.	14,913,544	268,451
United Gas Serv. Co.	807,536	19,453
Walnut Gas & Elec. Co.	144,495	3,490
Wellington Gas Co., The	1,869,727	32,984
Western Lt. & Tel. Co.	1,220,519	26,431
Citizens Gas Co.	147,170	3,555
Carl Junction Gas Co.	112,313	2,713
Springfield, Mo., City of	9,457,447	197,316
Aker Oil & Gas Co.	32,207	778
Baltic Operating Co.	220,292	5,321
Billings Gas Co.	21,615	522
Cleveland, [illegible]., City of	278,369	6,723
Wann, Okla., [illegible]ity of	26,567	642
Consol. Gas Util. Corp.	3,196,884	57,260
Georgia Oil & Gas Co.	70,003	1,691
Home Owners Coop. Gas	14,563	352
Mulhall Gas Co.	27,056	653
Pact Gas Co.	299,801	7,241
Peoples Gas Co.	6,931	167

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Appendix D
Page 2 of 2

Customer	Volumes @ 14.65 Psia	Amount of Refund
Rugh, W. E.	25,135	607
Ruth Fuel Co.	95,225	2,300
Vinita Fuel Co.	993,560	23,997
Wakita, Okla., City of	69,031	1,667
Miami Gas Co.	69,536	1,680
Total	317,224,452	$6,299,845

CITIES SERVICE GAS COMPANY

Jurisdictional Sales for Year 1955 Computed by Application of:

1. Pre - G-2410 Rates; 2. G-2410 Rates; 3. Settlement Rates.

Customer	Volumes @ 14.65 psia	Revenues of Pre-G-2410 Rates	Revenues of G-2410 Rates	Revenues of Settlement Rates	Annual Increase Over Old Rates	Annual Reduct. Below Suspend. Rates
Cities Service Gas Company	146,713,073	$24,038,378	$34,620,430	$31,917,384	$ 7,878,946	$ 2,703,106
Altamont, Kan., City of	37,284	7,220	10,129	9,257	2,037	872
Americus Gas Co.	1,316,216	198,883	286,915	265,129	66,646	21,386
Iola, Kansas, City of	208,700	42,125	58,271	53,302	11,177	4,969
Baxter Springs Gas Co.	330,954	62,349	91,511	83,681	21,332	7,830
Central West Utilities Co.	400,608	80,330	113,175	103,566	23,236	9,609
Garnett, Kansas, City of	225,504	45,859	63,377	57,986	12,127	5,391
Howard, Kansas, City of	88,244	18,140	23,743	21,749	3,609	1,994
Osage, Kansas, City of	137,390	29,116	40,363	36,982	7,866	3,381
Sylvia, Kansas, City of	48,105	8,033	11,552	10,702	2,669	850
Commercial Gas Pl. Co.	231,425	41,859	58,485	53,256	11,397	5,169
Gault, Ross	28,154	5,298	7,369	6,725	1,427	644
Bauche Pipeline Co.	120,568	24,530	33,900	31,017	6,487	2,883
Kansas P. & L. Co.	4,925,698	908,225	1,265,705	1,177,839	269,614	107,866
Kansas P. S. Co.	2,619,413	434,584	630,790	582,159	147,575	48,631
Eastern Kansas Gas Co.	62,021	8,297	12,064	11,026	2,729	1,038
Missouri Public Service	4,735,497	869,065	1,221,998	1,121,516	252,451	100,476
Severy Gas Co.	59,888	10,584	14,804	13,484	2,900	1,320
S.E. Kansas Gas Co.	93,999	17,987	24,984	22,815	4,828	2,169
Union Gas System	9,340,472	1,005,199	1,973,775	1,770,913	765,714	202,862
United Gas Service Co.	434,118	79,454	112,417	103,665	24,171	8,752
Walnut Gas & Elec. Co.	75,197	15,210	21,089	19,237	4,027	1,752
Wellington Gas Co.	1,097,838	145,986	218,581	203,082	57,076	15,519
Western Lt. & Tel. Co.	686,747	119,832	170,153	156,595	36,763	13,558
Citizens Gas Co.	77,529	12,585	17,862	16,446	3,861	1,416
Carl Junction Gas Co.	59,285	12,179	16,819	15,393	3,214	1,426
Springfield, Mo., City of	5,283,596	931,143	1,317,161	1,209,998	278,855	107,163
Aker Oil and Gas Co.	18,714	2,932	4,216	3,906	974	310
Baltic Operating Co.	119,587	21,153	29,281	27,046	5,893	2,235
Billings Gas Co.	10,171	1,431	2,059	1,908	477	151
Cleveland, Okla., City of	155,804	24,233	35,256	32,664	8,431	2,592
Wann, Okla., City of	14,213	2,583	3,604	3,286	703	318
Consolidated Gas Util. Corp.	2,167,149	252,457	459,071	434,516	182,059	24,555
Drumright Gas Co.	64,156	19,073	29,020	25,812	6,739	3,208
Georgia Oil & Gas Co.	37,203	6,035	8,680	8,042	2,007	638

Dockets Nos. G-2410 and G-9468

Customer	Volumes @ 14.65 psia	Revenues of Pre-G-2410 Rates	Revenues of G-2410 Rates	Settlement Rates	Annual Increase Over Old Rates	Annual Reduct. Below Suspend. Rates
Home Owners Coop Gas	7,599	$ 1,186	$ 1,709	$ 1,580	$ 394	$ 125
Mulhall Gas Co.	14,635	2,488	3,578	3,315	827	263
Pact Gas Co.	170,781	27,383	39,386	36,489	9,106	2,897
Peoples Gas Co.	4,000	632	910	843	211	67
Rugh, W. E.	13,465	1,993	2,867	2,656	663	211
Ruth Fuel Company	51,021	10,032	14,288	13,071	3,039	1,217
Okla. Public Service Corp.	4,049	1,244	1,828	1,635	391	193
State Fuel Supply Co.	1,412	616	835	765	149	70
Zenith Gas System	---	300	300	300	---	--
Vinita Fuel Co.	542,081	91,659	133,327	123,032	31,373	10,295
Wakita, Okla., Town of	36,683	5,753	8,276	7,667	1,914	609
Miami Gas Co.	38,843	6,098	8,772	8,127	2,029	645
Northern Oklahoma Gas	15	5	7	6	1	1
Total	182,909,104	$29,651,936	$43,244,562	$39,811,850	$10,159,914	$3,432,712
Consolid. Gas Util. (Sched.X-5)	5,265,068	714,664	714,664	762,752	48,088	
Total		$30,366,600	$43,959,226	$40,574,602	$10,208,002	

[fol. 581]

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[fol. 582]

EXHIBIT 5 TO MOTION BY PLAINTIFF FOR SUMMARY JUDGMENT

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

CERTIFICATION

I hereby certify that the attached one page is a true copy of a NOTICE dated February 19, 1954, from Stanolind Oil and Gas Company, designated ERWIN L. COX, FPC GAS RATE SCHEDULE No. 2, SUPPLEMENT No. 1, filed February 24, 1955 on file with this Commission.

This 16th day of February, 1959.

/s/ CHARLES C. BENNINGTON
NAME
TITLE Records Officer

I hereby certify that

NAME Charles C. Bennington
TITLE Records Officer

[Seal]

whose signature appears above, is official custodian of the records of the Federal Power Commission to which certification is made and was such official custodian at the time of executing the above certification.

/s/ J. H. GUTRIDE
Secretary

[fol. 583]
FPC Gas Rate
Schedule No. 2
Supplement No. 1
Filing Date: 2-29-55
Effective Date: Accepted

Received
Feb 24 3 06 PM '55
Federal Power Commission

[Handwritten notation—Edwin L. Cox]

STANOLIND OIL AND GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY, OKLAHOMA

February 19, 1954

NOTICE

To all persons receiving gas
settlements for Kansas Hugoton
production from or through
Stanolind Oil and Gas Company

Re: Kansas Corporation Commission
Order dated December 2, 1953,
Docket No. 44079-C (C-3216)
Kansas Hugoton Gas Field.

Settlements for Kansas Hugoton gas are being made to Stanolind Oil and Gas Company by gas purchasers on the basis of the minimum price order of the Kansas Corporation Commission, dated December 2, 1953, entered in Docket No. 44079-C (C-3216) upon the condition, however, that in the event said Order is held invalid, a refund be made to the purchaser of any amount so paid in excess of that payable in the absence of said Order.

Effective January 1, 1954, and subject to the terms hereof, Stanolind Oil and Gas Company will make settlements for gas produced in the Kansas Hugoton Field on the basis of the settlements made to it by gas purchasers and in compliance with said Order (providing that there should be paid therefor or attributed at the wellhead a minimum

price of not less than 11¢ per MCF measured at 14.65 pounds p.s.i.a.). Judicial review of said Order is pending in the courts, and in the event said Order is declared to be invalid in whole or in part, the settlements paid on the basis thereof will exceed the amount actually due and owing. Therefore, your acceptance of checks computed on the basis of said Order will constitute your agreement to refund amounts paid you over and above the amounts to which you would have been entitled in the event the Order is held invalid or inapplicable to gas in respect to which the settlement is made.

Yours very truly,

/s/ Geo. W. Clarke
Geo. W. Clarke

[fol. 584]

Exhibits 6 and 6A to Motion by Plaintiff for Summary Judgment

United States of America

Federal Power Commission

CERTIFICATION

I hereby certify that the attached ten (10) pages are true copies of the following items:

1. Letter from Law Offices of Dow, Lohnes and Albertson to Federal Power Commission, dated November 16, 1954
2. Letter from Stanolind Oil and Gas Company to Federal Power Commission, dated November 15, 1954 received November 16, 1954
3. Letter of Transmittal from Stanolind Oil and Gas Co. to Federal Power Commission, dated November 15, 1954 received November 16, 1954 on file with this Commission.

This 4th day of December, 1958.

/s/ CHARLES C. BENNINGTON
NAME
TITLE Records Officer

I hereby certify that

NAME Charles C. Bennington
TITLE Records Officer

whose signature appears above, is official custodian of the records of the Federal Power Commission to which certification is made and was such official custodian at the time of executing the above certification.

[Seal]

/s/ J. H. GUTRIDE
Secretary

[fol. 585]

Received
Nov 16 4 53 AM '54
Federal Power Commission

[Letterhead of Dow, Lohnes and Albertson—Washington 4, D. C.]

November 16, 1954

Honorable Leon M. Fuquay,
Secretary
Federal Power Commission
Washington 25, D. C.

100-2 GAS COR.

Dear Mr. Fuquay:

On behalf of Stanolind Oil and Gas Company, we hand you herewith for filing the following:

1. Original and fourteen copies of Application for Certificate of Public Convenience and Necessity au-

thorizing sale in interstate commerce for resale of natural gas produced from certain portions of the Hugoton field of Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton, and Hamilton Counties, Kansas, the same being made pursuant to Stanolind Contract No. 18,196.

2. Original and one copy of letter of transmittal dated November 15, 1954, and signed by John F. Jones, Esquire, covering initial rates applicable under said contract.

It is respectfully requested that this material be filed forthwith, and that we be advised of the docket number assigned thereto.

Yours very truly,

/s/ RICHARD B. MCENTIRE

encls

[fol. 586]

Received

Nov 16 4 55 AM '54
Federal Power Commission

November 15, 1954

Re: Rate Schedule of Stanolind Oil and Gas Company for sale of natural gas as an Independent Producer under section 4 of the Natural Gas Act in accordance with Federal Power Commission Order No. 174-A, issued August 6, 1954 (Stanolind No. *18,196*)

Secretary,
Federal Power Commission,
Washington 25, D. C.

Dear Sir:

The attached Letter of Transmittal constitutes the filing by Stanolind Oil and Gas Company of the initial rates set

forth in the gas sales contract appended thereto. In connection therewith Stanolind Oil and Gas Company hereby asserts its right to file said contract as its initial rate schedule unimpaired by those provisions of said order which purport to nullify the tax reimbursement, escalation, favored nations and other similar clauses of said contract.

In this connection it is respectfully submitted that, in the opinion of Stanolind Oil and Gas Company, Order 174-A is invalid in the respects referred to above and that, to whatever extent the Federal Power Commission may have jurisdiction over said sale of natural gas, the rates and charges in effect with respect to said sale are the rates and charges set forth in said contract in its entirety. The filing of said contract pursuant to the provisions of Order 174-A and compliance by Stanolind in the meantime with the provisions of said order shall not be deemed to constitute a waiver on Stanolind's part to assert its right to file initial rates of its own choosing.

Very truly yours,

/s/ JOHN F. JONES
John F. Jones,
Attorney for
Stanolind Oil and Gas Company

[fol. 587]
FORM NGA-10 (Hugoton)
Rate Schedule, Effective on 6/7/54

Received
Nov 16 4 55 AM '54
Federal Power Commission

Nov 15 1954

Letter of Transmittal

Rate Schedule of STANOLIND OIL AND GAS COMPANY for Sale of Natural Gas as an Independent Producer under Section 4 the Natural Gas Act, in accordance with Federal Power Commission Order No. 174-A, issued August 6, 1954 (Stanolind No. 18,196).	)	Docket No. G-.....

Secretary,
Federal Power Commission
Washington 25, D. C.

Dear Sir:

1. Pursuant to the requirements of Part 154 of Subchapter E, Regulations under the Natural Gas Act, Chapter I of Title 18, Code of Federal Regulations, as amended by Federal Power Commission Order No. 174-A, issued August 6, 1954, under Docket No. R-138, and particularly pursuant to Section 154.92 (a) of said Regulations, the undersigned, Stanolind Oil and Gas Company, as an independent producer, transmits herewith for filing a rate schedule covering a sale of natural gas to the purchaser(s) listed below, engaged in on and since June 7, 1954, and consisting of the following attachments hereto, in duplicate:

(a) Basic contract dated June 23, 1950 (Exhibit "A")

(b) The following amendments and supplements to said basic contract:

Letter of Agreement dated July 28, 1950 (Exhibit "A-1")

Letter of Agreement dated July 28, 1950 (Exhibit "A-2")

Letter of Agreement dated August 8, 1950. (Exhibit "A-3")

[fol. 588] Agreement to Sub. Dedicated Reserves dated October 3, 1950 (Exhibit "A-4")

Agreement to Sub. Dedicated Reserves dated October 3, 1950 (Exhibit "A-5")

Agreement to Sub. Dedicated Reserves dated October 11, 1950 (Exhibit "A-6")

Agreement to Sub. Dedicated Reserves dated October 16, 1950 (Exhibit "A-7")

Agreement to Sub. Dedicated Reserves dated November 22, 1950 (Exhibit "A-8")

Letter dated November 29, 1950 (Exhibit "A-9")

Agreement to Sub. Dedicated Reserves dated December 13, 1950 (Exhibit "A-10")

Agreement to Sub. Dedicated Reserves dated February 5, 1951 (Exhibit "A-11")

Agreement to Sub. Dedicated Reserves dated February 23, 1951 (Exhibit "A-12")

Letter dated May 18, 1951 (Exhibit "A-13")

Agreement to Sub. Dedicated Reserves dated May 31, 1951 (Exhibit "A-14")

Agreement to Sub. Dedicated Reserves dated June 25, 1951 (Exhibit "A-15")

Agreement to Sub. Dedicated Reserves dated July 2, 1951 (Exhibit "A-16")

Letter dated July 25, 1951 (Exhibit "A-17")

Letter dated July 25, 1951 (Exhibit "A-18")

Letter dated August 29, 1951 (Exhibit "A-19")

Letter dated August 31, 1951 (Exhibit "A-20")

Agreement to Sub. Dedicated Reserves dated October 16, 1951 (Exhibit "A-21")

Agreement to Sub. Dedicated Reserves dated October 25, 1951 (Exhibit "A-22")

[fol. 589] Agreement dated February 19, 1952 (Exhibit "A-23")

Agreement to Sub. Dedicated Reserves dated April 11, 1952 (Exhibit "A-24")

Agreement to Sub. Dedicated Reserves dated May 6, 1952 (Exhibit "A-25")

Agreement to Sub. Dedicated Reserves dated June 27, 1952 (Exhibit "A-26")

Agreement to Sub. Dedicated Reserves dated July 17, 1952 (Exhibit "A-27")

Agreement to Sub. Dedicated Reserves dated July 25, 1952 (Exhibit "A-28")

Agreement to Sub. Dedicated Reserves dated November 12, 1952 (Exhibit "A-29")

Release from Dedication dated March 16, 1953 (Exhibit "A-30")

Agreement to Substitute dated May 25, 1953 (Exhibit "A-31")

Agreement to Substitute dated May 28, 1953 (Exhibit "A-32")

Release dated June 8, 1953 (Exhibit "A-33")

Letter dated June 8, 1953 (Exhibit "A-34")

Letter dated June 9, 1953 (Exhibit "A-35")

Letter dated June 9, 1953 (Exhibit "A-36")

Agreement to Substitute dated June 19, 1953 (Exhibit "A-37")

Letter dated June 26, 1953 (Exhibit "A-38")

Letter dated June 26, 1953 (Exhibit "A-39")

Agreement to Substitute dated July 7, 1953 (Exhibit "A-40")

Letter dated July 7, 1953 (Exhibit "A-41")

Assignment dated July 8, 1953 (Exhibit "A-42")

Release dated July 14, 1953 (Exhibit "A-43")

[fol. 590] Letter dated July 17, 1953 (Exhibit "A-44")

Letter dated July 27, 1953 (Exhibit "A-45")

Letter dated August 7, 1953 (Exhibit "A-46")

Release dated September 9, 1953 (Exhibit "A-47")

Letter dated November 4, 1953 (Exhibit "A-48")

Agreement to Substitute dated October 27, 1953 (Exhibit "A-49")

Agreement to Substitute dated November 19, 1953 (Exhibit "A-50")

Release dated November 30, 1953 (Exhibit "A-51")

Letter dated December 9, 1953 (Exhibit "A-52")

Letter dated January 8, 1954 (Exhibit "A-53")

Letter dated January 20, 1954 (Exhibit "A-54")

Letter dated February 8, 1954 (Exhibit "A-55")

Agreement to Substitute dated February 15, 1954 (Exhibit "A-56")

Letter dated March 4, 1954 (Exhibit "A-57")

Letter dated March 12, 1954 (Exhibit "A-58")

Letter dated April 2, 1954 (Exhibit "A-59")

Letter dated April 27, 1954 (Exhibit "A-60")

Letter dated May 14, 1954 (Exhibit "A-61")

Letter dated May 19, 1954 (Exhibit "A-62")

Letter dated May 19, 1954 (Exhibit "A-63")

Letter dated June 7, 1954 (Exhibit "A-64")

Letter dated June 25, 1954 (Exhibit "A-65")

Letter dated June 25, 1954 (Exhibit "A-66")

Letter dated June 25, 1954 (Exhibit "A-67")

Letter dated July 7, 1954 (Exhibit "A-68")

[fol. 591] Letter dated July 9, 1954 (Exhibit "A-69")

Letter dated July 9, 1954 (Exhibit "A-70")

Letter dated July 22, 1954 (Exhibit "A-71")

Letter dated August 3, 1954 (Exhibit "A-72")

Letter dated August 4, 1954 (Exhibit "A-73")

Letter dated August 13, 1954 (Exhibit "A-74")

Letter dated August 19, 1954 (Exhibit "A-75")

Letter dated August 25, 1954 (Exhibit "A-76")

2. The basic contract and the above-listed supplements and agreements amendatory thereof were effective and applicable on and after June 7, 1954, and show the service to be provided and the rates and charges, terms, conditions, classifications, practices, rules and regulations affecting or relating to such rates or charges, applicable to said sale of natural gas. The rates covered by this filing shall remain in full force and effect until changed as provided by law, or until said basic contract terminates or is validly cancelled whichever occurs first.

3. Attached hereto (Exhibit "B") is a statement in duplicate showing actual billing for a recent month in sufficient detail to show how the billing amount is determined.

4. That on December 2, 1953, but effective as of January 1, 1954, the State Corporation Commission of the State of Kansas issued an order in Docket No. 44,079-C (C-3216) prohibiting Applicant from producing the natural gas covered by said gas sales contract unless Applicant obtained

from the sale thereof a wellhead price of not less than 11¢ per mcf measured at a pressure base of 14.65 psia. A true [fol. 592] and correct copy of said order is attached hereto as Exhibit "C" and made by reference a part hereof. It has been judicially determined by final judgments of a court of competent jurisdiction that the fixing by said state Commission of minimum wellhead prices is a valid exercise of the authority delegated to it to regulate the production of gas for the purpose of preventing waste, and said gas sales contract is, therefore, subject to said order and has been, in effect, amended thereby. The buyer under said gas sales contract was on June 7, 1954, paying Applicant the minimum wellhead price prescribed by said order, and, if this Commission should prescribe for the gas covered by said gas sales contract a wellhead price lower than that currently in effect under the applicable orders of said state Commission, Applicant will thereafter be prohibited by law from producing the gas covered by said gas sales contract.

5. The name and address of the purchaser under the attached rate schedule are:

Cities Service Gas Company
First National Bank Building
Oklahoma City 1, Oklahoma

6. This filing has no applicability to the rates and charges covered hereby to the extent that such rates and charges relate to sales of natural gas in intrastate commerce.

7. This initial rate filing not only relates to Stanolind Oil and Gas Company's interest in the gas covered by said gas sales contract, but said initial rates are also being filed for the benefit and in behalf of all nonoperators whose respective shares of the gas produced from jointly-owned [fol. 593] properties operated by Stanolind have been sold under said contract by Stanolind, as their agent, because of their failure to dispose of the same, to the extent that such nonoperators elect in writing to concur herein or to adopt this initial rate filing as their own.

8. This filing is being made under the compulsion of Order No. 174-A, which was issued without notice and a hearing. The undersigned believes that said order is subject to certain procedural defects and that, in some respects, it exceeds the authority delegated to the Commission by the Natural Gas Act and is, therefore, to that extent invalid. In addition, it is impossible, in some instances, for the undersigned to determine with certainty whether said order applies to it. The undersigned does not desire to incur the penalties which would be imposed upon it for violating those portions of the order which are of questionable meaning or of doubtful validity, especially in the event the order is ultimately determined to be definite or valid in those respects. Therefore, this filing is made under protest without prejudice to the undersigned's right to attack the validity of said order by pending or fufure proceedings before the Commission or in the courts, and nothing herein shall be deemed to constitute a waiver of said right. If it should be judicially determined that said order is invalid as to others in respects which are applicable to the undersigned, then the fact that the undersigned has, in the meantime, complied with said order [fol. 593a] shall not deprive it of its right thereafter to rely upon such determination.

Respectfully submitted,

STANOLIND OIL AND GAS COMPANY

By /s/ JOHN F. JONES
John F. Jones
Attorney

511 South Boston Avenue
Tulsa 3, Oklahoma

Attachments:
Exhibit "A", Basic contract
Exhibits "A-1" to "A-76",
supplements and amendments
Exhibit "B", Statement
Exhibit "C", Copy of Order

[fol. 594]

EXHIBIT 7 TO MOTION BY PLAINTIFF FOR SUMMARY JUDGMENT

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

CERTIFICATION

I hereby certify that the attached six (6) pages are true copies of a letter from Federal Power Commission to Stanolind Oil & Gas Company dated March 2, 1955 on file with this Commission.

This 4th day of December, 1958.

/s/ CHARLES C. BENNINGTON
NAME
TITLE Records Officer

I hereby certify that

NAME Charles C. Bennington
TITLE Records Officer

whose signature appears above, is official custodian of the records of the Federal Power Commission to which certification is made and was such official custodian at the time of executing the above certification.

[Seal]

/s/ J. H. GUTRIDE
Secretary

[fol: 597]

Files 1

ADDRESS ALL COMMUNICATIONS
TO THE SECRETARY

FEDERAL POWER COMMISSION
WASHINGTON 25

Mar 2 1955

100-2 Gas Cor.

Stanolind Oil & Gas Co.
511 South Boston Avenue
Tulsa 3, Oklahoma

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the rates being charged June 7, 1954, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 174~~-A~~ *B*. The Act and the Commission's rules require that such changes be filed with the Commission not more than ~~60~~ *90* days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may

Italics indicate handwritten material.

hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

Very truly yours,

LEON M. FUQUAY
Secretary

Rates
JM:bls
2/9/55
EMN
2/25/55

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
	Stanolind Oil & Gas Co.	
Contract dated 6/23/50	11/15/54	F.P.C. Gas Rate Schedule No. 84
Letter dated 7/28/50	11/15/54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 84
Letter dated 7/28/50	11/15/54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 84
Letter dated 8/8/50	11/15/54	Supplement No. 3 to F.P.C. Gas Rate Schedule No. 84
[fol. 596]		
Supp. Agree. dated 10/3/50	11/15/54	Supplement No. 4 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 10/3/50	11/15/54	Supplement No. 5 to F.P.C. Gas Rate Schedule No. 84
Letter dated 10/11/50	11/15/54	Supplement No. 6 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 10/16/50	11/15/54	Supplement No. 7 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 11/22/50	11/15/54	Supplement No. 8 to F.P.C. Gas Rate Schedule No. 84
Letter dated 11/29/50	11/15/54	Supplement No. 9 to F.P.C. Gas Rate Schedule No. 84

Italics indicate handwritten material.

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
Supp. Agree. dated 12/13/50	11/15/54	Supplement No. 10 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 2/5/51	11/15/54	Supplement No. 11 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 2/23/51	11/15/54	Supplement No. 12 to F.P.C. Gas Rate Schedule No. 84
Letter dated 5/18/51	11/15/54	Supplement No. 13 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 5/31/51	11/15/54	Supplement No. 14 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 6/25/51	11/15/54	Supplement No. 15 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 7/2/51	11/15/54	Supplement No. 16 to F.P.C. Gas Rate Schedule No. 84
Letter dated 7/25/51	11/15/54	Supplement No. 17 to F.P.C. Gas Rate Schedule No. 84
Letter dated 7/25/51	11/15/54	Supplement No. 18 to F.P.C. Gas Rate Schedule No. 84
[fol. 597] Letter dated 8/29/51	11/15/54	Supplement No. 19 to F.P.C. Gas Rate Schedule No. 84
Letter dated 8/31/51	11/15/54	Supplement No. 20 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 10/16/51	11/15/54	Supplement No. 21 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 10/25/51	11/15/54	Supplement No. 22 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 2/19/52	11/15/54	Supplement No. 23 to F.P.C. Gas Rate Schedule No. 84

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
Supp. Agree. dated 4/11/52	11/15/54	Supplement No. 24 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 5/6/52	11/15/54	Supplement No. 25 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 6/27/52	11/15/54	Supplement No. 26 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 7/17/52	11/15/54	Supplement No. 27 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 7/25/52	11/15/54	Supplement No. 28 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 11/12/52	11/15/54	Supplement No. 29 to F.P.C. Gas Rate Schedule No. 84
Release dated 3/16/53	11/15/54	Supplement No. 30 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 5/25/53	11/15/54	Supplement No. 31 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 5/28/53	11/15/54	Supplement No. 32 to F.P.C. Gas Rate Schedule No. 84
Release dated 6/8/53	11/15/54	Supplement No. 33 to F.P.C. Gas Rate Schedule No. 84
[fol. 598] Letter dated 6/8/53	11/15/54	Supplement No. 34 to F.P.C. Gas Rate Schedule No. 84
Letter dated 6/9/53	11/15/54	Supplement No. 35 to F.P.C. Gas Rate Schedule No. 84
Letter dated 6/9/53	11/15/54	Supplement No. 36 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. 6/19/53	11/15/54	Supplement No. 37 to F.P.C. Gas Rate Schedule No. 84

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
Letter dated 6/26/53	11/15/54	Supplement No. 38 to F.P.C. Gas Rate Schedule No. 84
Letter dated 6/26/53	11/15/54	Supplement No. 39 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 7/7/53	11/15/54	Supplement No. 40 to F.P.C. Gas Rate Schedule No. 84
Letter dated 7/7/53	11/15/54	Supplement No. 41 to F.P.C. Gas Rate Schedule No. 84
Assignment dated 7/8/53	11/15/54	Supplement No. 42 to F.P.C. Gas Rate Schedule No. 84
Release dated 7/14/53	11/15/54	Supplement No. 43 to F.P.C. Gas Rate Schedule No. 84
Letter dated 7/17/53	11/15/54	Supplement No. 44 to F.P.C. Gas Rate Schedule No. 84
Letter dated 7/27/53	11/15/54	Supplement No. 45 to F.P.C. Gas Rate Schedule No. 84
Letter dated 8/7/53	11/15/54	Supplement No. 46 to F.P.C. Gas Rate Schedule No. 84
Release dated 9/9/53	11/15/54	Supplement No. 47 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 10/27/53	11/15/54	Supplement No. 48 to F.P.C. Gas Rate Schedule No. 84
Letter dated 11/4/53	11/15/54	Supplement No. 49 to F.P.C. Gas Rate Schedule No. 84
[fol. 599]		
Supp. Agree. dated 11/19/53	11/15/54	Supplement No. 50 to F.P.C. Gas Rate Schedule No. 84
Release dated 11/30/53	11/15/54	Supplement No. 51 to F.P.C. Gas Rate Schedule No. 84
Letter dated 12/9/53	11/15/54	Supplement No. 52 to F.P.C. Gas Rate Schedule No. 84

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
Letter dated 1/8/54	11/15/54	Supplement No. 53 to F.P.C. Gas Rate Schedule No. 84
Letter dated 1/20/54	11/15/54	Supplement No. 54 to F.P.C. Gas Rate Schedule No. 84
Letter dated 2/8/54	11/15/54	Supplement No. 55 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 2/15/54	11/15/54	Supplement No. 56 to F.P.C. Gas Rate Schedule No. 84
Letter dated 3/4/54	11/15/54	Supplement No. 57 to F.P.C. Gas Rate Schedule No. 84
Letter dated 3/12/54	11/15/54	Supplement No. 58 to F.P.C. Gas Rate Schedule No. 84
Letter dated 4/2/54	11/15/54	Supplement No. 59 to F.P.C. Gas Rate Schedule No. 84
Letter dated 4/27/54	11/15/54	Supplement No. 60 to F.P.C. Gas Rate Schedule No. 84
Letter dated 5/14/54	11/15/54	Supplement No. 61 to F.P.C. Gas Rate Schedule No. 84
Letter dated 5/19/54	11/15/54	Supplement No. 62 to F.P.C. Gas Rate Schedule No. 84
Letter dated 5/19/54	11/15/54	Supplement No. 63 to F.P.C. Gas Rate Schedule No. 84
Letter dated 6/7/54	11/15/54	Supplement No. 64 to F.P.C. Gas Rate Schedule No. 84
Letter dated 6/25/54	11/15/54	Supplement No. 65 to F.P.C. Gas Rate Schedule No. 84
[fol. 600] Letter dated 6/25/54	11/15/54	Supplement No. 66 to F.P.C. Gas Rate Schedule No. 84
Letter dated 6/25/54	11/15/54	Supplement No. 67 to F.P.C. Gas Rate Schedule No. 84

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
etter dated 7/7/54	11/15/54	Supplement No. 68 to F.P.C. Gas Rate Schedule No. 84
etter dated 7/9/54	11/15/54	Supplement No. 69 to F.P.C. Gas Rate Schedule No. 84
etter dated 7/9/54	11/15/54	Supplement No. 70 to F.P.C. Gas Rate Schedule No. 84
etter dated 7/22/54	11/15/54	Supplement No. 71 to F.P.C. Gas Rate Schedule No. 84
etter dated 8/3/54	11/15/54	Supplement No. 72 to F.P.C. Gas Rate Schedule No. 84
etter dated 8/4/54	11/15/54	Supplement No. 73 to F.P.C. Gas Rate Schedule No. 84
etter dated 8/13/54	11/15/54	Supplement No. 74 to F.P.C. Gas Rate Schedule No. 84
etter dated 8/19/54	11/15/54	Supplement No. 75 to F.P.C. Gas Rate Schedule No. 84
etter dated 8/25/54	11/15/54	Supplement No. 76 to F.P.C. Gas Rate Schedule No. 84
an. C.C. Order dated 12/2/53	11/15/54	Supplement No. 77 to F.P.C. Gas Rate Schedule No. 84

[fol. 601]

EXHIBIT 10 TO MOTION BY PLAINTIFF FOR SUMMARY JUDGMENT

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,	)	Civil Action No. 722
v.	)	1958
PAN AMERICAN PETROLEUM CORPORATION, a corporation, Defendant.	)	

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

RUSSEL W. HORSESS, of lawful age, being first duly sworn, upon his oath deposes and says:

That he is the duly elected, qualified and acting Vice President of plaintiff, Cities Service Gas Company, a corporation; that he is in charge of Production and Supply for such corporation; that as such officer of such corporation he has in his custody and under his control certain records of such corporation relating to the facts, matters and things involved in the above styled and numbered cause; that in such files and records are the following:

EXHIBIT 11A—A true and correct copy of a letter dated January 21, 1954 from plaintiff to defendant. Affiant says that the original of such letter was signed by an officer of plaintiff-corporation and was handled in the regular course of plaintiff's business to be mailed by U. S. mail to defendant at its correct address with postage fully prepaid thereon.

EXHIBIT 11B—A true and correct copy of a letter dated January 27, 1954 from defendant to plaintiff:

each of which is attached hereto, made a part hereof by reference, incorporated herein and marked as shown above.

FURTHER AFFIANT SAITH NOT.

/s/ RUSSEL W. HOFSESS

Subscribed and sworn to before me this 13th day of February, 1959.

/s/ HELEN LACER
Notary Public

My commission expires:
May 22, 1959.

[fol. 602]

EXHIBIT 11A TO MOTION BY PLAINTIFF FOR SUMMARY JUDGMENT

[Emblem]

CITIES SERVICE GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY 1, OKLAHOMA

January 21, 1954

Stanolind Oil & Gas Company
P. O. Box 1654
Oklahoma City, Oklahoma

Gentlemen:

The State Corporation Commission of the State of Kansas by Order dated December 2, 1953, in Docket No. 44079-C (C-3216) directed that on and after January 1, 1954, as a condition precedent for withdrawal of gas from the Hugoton Gas Field in Kansas, there shall be paid therefor or attributed thereto, at the wellhead, a minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.).

Cities Service Gas Company and certain other parties filed Petitions in the District Court of Finney County, Kansas, for a judicial review of the said Order.

Pending final judicial determination of the said Order and beginning January 1, 1954, Cities Service Gas Company intends to pay for all gas purchased by it in the Kansas Hugoton Field in strict compliance with the terms and conditions of the said Order. Such compliance with said Order by this Company, however, is made to avoid the penalties and actions provided by the Kansas statutes for a violation thereof, and the payments made to you in compliance with said Order pending its final judicial determination are to be considered and accepted by you as involuntary payments on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said Order.

In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments.

Very truly yours,

Original signed by G. C. Roth
G. C. Roth
Vice President

GCR:hL

[fol. 603]

EXHIBIT 11B TO MOTION BY PLAINTIFF FOR SUMMARY JUDGMENT

STANOLIND OIL AND GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY, OKLAHOMA

PRODUCING DEPARTMENT
K. W. BOLT
DIVISION PRODUCTION
SUPERINTENDENT

FILE KWB-11

January 27, 1954

Cities Service Gas Company
First National Building
Oklahoma City 1, Oklahoma

Gentlemen:

This refers to your letter of January 21, 1954, relating to payments for Kansas Hugoton Gas on and after January 1, 1954 under Gas Purchase Contract dated June 23, 1950. We construe the last paragraph of said letter to mean that Cities will expect Stanolind to refund to it the amount of over-payments, if any, without any interest thereon should the said Order of December 2, 1953 be finally judicially modified or declared to be invalid in whole or in part by an adjudication which would be binding and controlling on Stanolind. We will, therefore, accept payments on this basis.

Very truly yours,

/s/ K. W. BOLT
K. W. Bolt

KWB:hem

[fol. 604] [File endorsement omitted]

[fol. 605]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 722, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—v.—

PAN AMERICAN PETROLEUM CORPORATION,
a corporation, Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO STAY—Filed March 11, 1959

* * * * * * *

[fol. 606]

IV. Paragraph 5 (c) of Pan Am's Motion to Stay Is Foreign to the Issues Raised by the Motion to Stay, and Has No Bearing Upon the Merits of This Case.

* * * * * * *

[fol. 607] Cities' first pipeline in the Kansas-Hugoton Field was the 26" interstate pipeline, constructed in 1948 pursuant to the provisions of the 1946 Contract between Pan Am and Cities. That pipeline extended from the Kansas-Hugoton field to the Kansas City, Missouri area. It costs in excess of $27,000,000. It was built *after* Pan Am had acquired its 600,000 acres of leases in that field. It was constructed pursuant to a Certificate of Public Convenience and Necessity, granted to Cities by the Federal Power Commission, upon the basis of gas acquired by Cities under the 1948 Contract with Stanolind and under other similar gas-purchase contracts. All gas transported through that pipeline and through Cities' pipeline subsequently acquired in that field has been purchased by Cities from third parties, such as Pan Am. No gas *produced* by Cities or by any of its affiliates in that field has ever been transported through Cities pipelines. Cities could not drain gas

from any unconnected well of Pan Am because all of Pan Am's wells and leases have been covered by contracts with Cities from the completion of Cities' pipeline. When gas had reached Cities' pipeline it had found a buyer, it had a market, and it had been measured, and no one, in- [fol. 608] cluding Pan Am, was thereafter concerned with such gas except Cities. Pan Am, or some other producer, was responsible for blowing gas, rapid depletion, and avoidable leakage in wellheads, for Pan Am, or some other producer, had control of operations pertaining thereto—not Cities. The 1935 Kansas Gas Conservation Statutes, first enacted in 1935, were and are directed to producer operations such as Pan Am's operations—not operations such as Cities'.

Pursuant to Pan Am's insistence, its oil and gas leases provide for a term extending as long as gas can be produced from the leased land; also, its leases obligate Pan Am to find a market for its gas. Pan Am insisted that the 1946 and 1950 Gas Purchase Contracts with Cities contain a provision obligating Cities to take gas from Pan Am's leases as long as gas could be produced from such leases in commercial quantities. Since practically the entire market for gas produced in the Kansas Hugoton Field is located outside the State of Kansas, it was and is necessary, in order to justify the construction and operation of a pipeline from that field to the market, for a pipeline company to obtain a dependable supply of gas sufficient to amortize the cost of construction and operation of the pipeline and in order to secure from Federal Power Commission a Certificate of Public Convenience and Necessity and to obtain the required substantial financing. The 1950 Gas Purchase Contract contains a life-of-production provision because both Stanolind and Cities insisted upon it for their respective mutual benefits.

* * * * * * *

[fol. 609]

EXHIBIT D TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO STAY

V. R. CITIES SERVICE GAS COMPANY 2-24-54 C.R.
OKLAHOMA CITY, OKLAHOMA

	Net Amount
In full settlement of gas purchased for the period ending 1-22-54, subject to provisions of letters dated 8-25-53, and 1-21-54 with reference to gas purchased in Kansas.	725,493.48

VOUCHER NO. CHECK NO. 12585

CITIES SERVICE GAS COMPANY
OKLAHOMA CITY, OKLA.

THE CHASE NATIONAL BANK
OF THE CITY OF NEW YORK
1-74 NEW YORK, N. Y.

Feb 25 1954

Feb 25 1954

PAY SEVEN HUNDRED TWENTY FIVE THOUSAND FOUR HUNDRED NINETY THREE AND 48/100 $725,493.48

IN FULL SETTLEMENT OF ACCOUNT AS SHOWN IN ACCOMPANYING VOUCHER

TO THE ORDER OF STANOLIND OIL AND GAS COMPANY
P. O. Box 1654
Oklahoma City, Oklahoma

CITIES SERVICE GAS COMPANY

/s/ C. J. MARTIN

/s/ A. C. KLEINSCHMIDT

EXHIBIT "D"

COUNTERSIGNATURE REQUIRED WHEN DRAWN FOR MORE THAN $200.00

Cancelled stamp illegible
N.P. 39-1
1612

[fol. 610] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 610a] [File endorsement omitted]

[fol. 611]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 722

1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—v.—

PAN AMERICAN PETROLEUM CORPORATION, a corporation, Defendant.

BRIEF OF DEFENDANT, PAN AMERICAN PETROLEUM CORPORATION, IN SUPPORT OF ITS MOTION FOR STAY—Filed April 14, 1959

Morris, Nichols, Arsht & Tunnell, James M. Tunnell, Jr., 3000 duPont Building, Wilmington, Delaware.

Of Counsel: W. W. Heard, Esquire, P. O. Box 591, Tulsa 2, Oklahoma.

April 14, 1959.

[fol. 612] Statement of the Case

Defendant (Pan American) under its former name, Stanolind Oil and Gas Company, and plaintiff (Cities Service) have heretofore entered into a written contract dated June 23, 1950, covering the purchase and sale of dry gas produced from Pan American's oil and gas leases located in the Hugoton Field of Kansas. A copy of said contract is attached as Exhibit "A" to the plaintiff's Complaint filed in this action.

Cities Service seeks in this action to recover from Pan American the difference between the price it has paid

(11¢ per MCF at 14.65 p.s.i.a.) for gas sold and delivered from January 1, 1954, through November 22, 1957, under the terms of said contract, and the price it claims to be due (8.4¢ per MCF at 14.65 p.s.i.a.) under the terms thereof.[1] Pan American, in its *prior* action commenced in the District Court of Seward County, Kansas, styled *Pan American Petroleum Corporation* v. *Cities Service Gas Company*, No. 7219, seeks a declaratory judgment that the contract [fol. 613] has been modified to provide for a price of 11¢ per MCF at 14.65 p.s.i.a. for gas delivered under said contract for the same period and thereafter until June 23, 1961. A copy of the petition filed in said action is attached as Exhibit "A" to the motion filed herein.

Thus the same ultimate issue that must be determined *in both actions* is what is the price Cities Service is obligated to pay and Pan American is entitled to receive for gas delivered under the terms of the June 23, 1950, contract.

Pan American by its motion for a stay of this proceeding has invoked the authority of this court to hold the proceeding in abeyance pending the determination of the prior Kansas action.

• • • • • • •

[1] Cities Service has characterized this action as a refund suit based upon an alleged "refund contract". Putting aside the dispute over the legal sufficiency or existence of any such "refund contract", the issue, nevertheless, as framed by Cities Service in its Complaint herein, is simply what was the contract price applicable for gas delivered during the period January 1, 1954 through November 22, 1957. Even assuming for purposes of argument the legal existence of such a refund contract, nevertheless, plaintiff *must rely* on a contract price of 8.4¢ per MCF at 16.4 p.s.i.a. in order to recover on its theory of the case.

[fol. 614]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 722

1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—v.—

PAN AMERICAN PETROLEUM CORPORATION, a corporation, Defendant.

STIPULATION—Filed May 8, 1959

NOW, TO WIT, this 7th day of May, 1959,

IT IS STIPULATED by and between the parties as follows:

1. Defendant hereby withdraws its Motion for a Stay filed January 15, 1959, and will not renew or refile such a motion or make any other application which would operate to stay this action, except a plea or other presentation of the defense of *res judicata*, if it should become appropriate, based upon a decision of one or more of the issues of this case by the courts of Kansas in the pending declaratory judgment action.

2. Plaintiff may file supplemental affidavits in support of its Motion for Summary Judgment on or before May 26, 1959.

3. Defendant shall file its answer to the Complaint by May 26, 1959, and a Motion for Summary Judgment on or before June 8, 1959.

4. Defendant shall file its answering affidavits, if any, on plaintiff's Motion for Summary Judgment and shall [fol. 615] file its affidavits in support of defendant's Motio nfor Summary Judgment on or before June 22, 1959.

5. Plaintiff shall file its reply affidavits, if any, on plaintiff's Motion and its answering affidavits, if any, on defendant's Motion on or before July 15, 1959.

6. Defendant shall file its reply affidavits, if any, on defendant's Motion for Summary Judgment on or before July 25, 1959.

7. Plaintiff shall file its brief in support of its Motion for Summary Judgment and in opposition to defendant's Motion for Summary Judgment on or before August 15, 1959.

8. Defendant shall file its answering brief on plaintiff's Motion for Summary Judgment and main brief on defendant's Motion for Summary Judgment on or before September 15, 1959.

9. Plaintiff shall file its answering brief on defendant's Motion for Summary Judgment on or before October 1, 1959.

10. Defendant shall file its reply brief on its Motion for Summary Judgment on or before October 15, 1959.

11. Argument on both Motions for Summary Judgment shall be held at 10:00 o'clock in the forenoon on October 23, 1959.

12. An agreement underlying and controlling the above schedule is that this defendant shall not be required to argue or file briefs in respect to the plaintiff's Motion for Summary Judgment prior to argument or the filing of the corresponding briefs on plaintiff's Motions for Sum- [fol. 616] mary Judgment in either of its presently pending refund suits against Columbian Fuel Corporation or The Texas Company (1958 Civil Actions No. 670, No. 671 and No. 708, respectively). Therefore, if any brief or the argument in one of the above cases should be postponed to a date later than the corresponding date above provided, the remaining dates in this schedule would be automatically deferred to an extent equivalent to such postponement.

13. Nothing contained herein shall be construed as an agreement by defendant to stay or delay the prosecution

of its pending declaratory judgment action against this plaintiff in Kansas.

Howard L. Williams, Bank of Delaware Bldg., Wilmington, Delaware, Attorney for Plaintiff.

Morris, Nichols, Arsht & Tunnell, James M. Tunnell, Jr., 3000 duPont Building, Wilmington, Delaware, Attorneys for Defendant.

Approved this 8th day of May, 1959.

Albert J. Stiftel, J.

[fol. 617] [File endorsement omitted]

[fol. 618]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 722

1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—v.—

PAN AMERICAN PETROLEUM CORPORATION, a corporation, Defendant.

AMENDMENT TO COMPLAINT—Filed May 12, 1959

Now comes Cities Service Gas Company, Plaintiff, by its attorney, Henry N. Herndon, Jr., and, no responsive pleading having been served or filed, amends its Complaint in accordance with Rule 15 of the Rules of this Court, by adding between paragraphs 3 and 4 of the Complaint a new paragraph numbered 3A and by adding between paragraphs 7 and 8 of the Complaint a new paragraph numbered 7A as follows:

"3A Plaintiff owns and operates an interstate gas pipeline system. During all times material herein, plaintiff has been, and is now, engaged generally in the business of purchasing natural gas for transportation and sale in interstate commerce for resale for ultimate public

consumption for domestic, commercial, industrial or any other use in furtherance whereof the contract referred to in paragraph 3, above, was entered into."

"7A During such period plaintiff made each monthly payment, based upon said minimum price order, involuntarily and under business compulsion and duress; in order to perform its contracts with its customers; [fol. 619] in order to perform its duty to the public to deliver gas to its customers continuously and uninterruptedly; in order to avoid the sanctions imposed by Kansas statutes, as aforesaid; and under compulsion of the minimum price-fixing order. The increased price for gas compelled plaintiff to seek and obtain increased rates for gas delivered to its customers.

Morris, James, Hitchens & Williams, Henry N. Herndon, Jr., 701 Bank of Delaware Building, Wilmington, Delaware.

[fol. 620] [File endorsement omitted]

[fol. 621]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 722, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—v.—

PAN AMERICAN PETROLEUM CORPORATION, a corporation, Defendant.

ANSWER—Filed May 26, 1959

Defendant, Pan American Petroleum Corporation, for its Answer to plaintiff's complaint, and amendment thereto, hereinafter referred to as "Complaint", alleged and states:

First Defense

The complaint fails to state a claim against defendant upon which any relief can be granted.

Second Defense

1-2. Admits the allegations contained in numbers "1" and "2" of the complaint.

3. Admits that it entered into the contract described in the first unnumbered paragraph of number "3" of the complaint and that a copy of the contract as initially constituted is attached to the complaint and marked Exhibit "A" thereto. Admits the allegations contained in subparts (a) and (b) of the second unnumbered paragraph of number "3" of the complaint but denies the allegations contained in subpart (c) thereof. Denies that the price mentioned in the contract is or has been since January 1, 1954, the applicable price between plaintiff and defendant and [fol. 622] denies that the gas measurement pressure base therein specified is or has been since before January 1, 1954, the applicable gas measurement pressure base between plaintiff and defendant. Denies that the contract attached to the complaint and marked Exhibit "A" is the entire contract between plaintiff and defendant.

3A. Admits the allegations contained in the first sentence of number "3A" of the complaint, and, as to the second sentence of said number "3A", admits that a portion of the gas purchased by plaintiff from defendant is transported and resold by plaintiff for ultimate consumption outside of the State of Kansas; and states that defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained therein.

4. Admits the allegations contained in the first unnumbered paragraph of number "4" of the complaint.

As to the second unnumbered paragraph of number "4" of the complaint, admits that the Kansas 11¢ minimum price order directed defendant to receive 11¢ per MCF at 14.65 psia for gas produced from the Hugoton Field in Kansas as a condition precedent to the withdrawal of such gas; denies that the Kansas 11¢ minimum price order was directed to plaintiff in its capacity as a purchaser of gas; and states that it is without knowledge or information suffi-

cient to form a belief as to the truth of plaintiff's allegations of increase in costs.

Admits the allegations contained in the third unnumbered paragraph of number "4" of the complaint, except that defendant denies that such order imposed any such sanctions or that such sanctions, if imposed by either the [fol. 623] order or the law, were applicable to or could have been imposed upon plaintiff for failure to pay defendant the price provided for in the Kansas 11¢ minimum price order.

5. Admits that it received the letter from plaintiff dated January 21, 1954, and mailed to plaintiff a letter dated January 27, 1954, in the form alleged in the first three unnumbered paragraphs in number "5" of the complaint, but denies that plaintiff and defendant entered into any contract wherein it was agreed that should such price order be finally judicially declared to be invalid, then defendant would refund to plaintiff any overpayment made by plaintiff to defendant on account of such price order; and denies that the letters and checks referred to in number "5" of the complaint, or either of them, constitute a contract between plaintiff and defendant.

Admits the allegations contained in the fourth unnumbered paragraph of number "5" of the complaint, but denies that said payments were made subject to any alleged written contract to refund and that said statements indicate the existence of any contract to refund.

Denies the allegations contained in the fifth unnumbered paragraph of number "5" of the complaint and alleges that said letter of August 25, 1953, together with the letters referred to therein, is material.

6. Admits the allegations contained in the first unnumbered paragraph of number "6" of the complaint, but denies the allegations contained in the second unnumbered paragraph of number "6" of the complaint.

7. As to the allegations contained in number "7" of the complaint, admits that beginning January 29, 1958, plain- [fol. 624] tiff made demands upon defendant for various amounts and that defendant has refused to pay any of said

amounts, and denies each and every other allegation contained in said paragraph.

7A. As to the allegations contained in number "7A" of the complaint, admits that plaintiff increased its rates to its customers and denies each and every other allegation contained in said paragraph.

8. As to the allegations contained in number "8" of the complaint, admits that, during the time involved herein, plaintiff paid defendant the rate of 11¢ per MCF at 14.65 psia with allowance for deviation from Boyle's Law, plus appropriate tax reimbursement, but denies that any part of said payments constituted overpayments; and denies each and every other allegation contained therein.

9. Denies the allegations contained in number "9" of the complaint.

10. Denies each, every, and all allegations of the complaint not herein specifically admitted, or controverted or specifically denied.

Third Defense

11. Defendant alleges that by letter of transmittal dated November 15, 1954, with forwarding letter dated November 16, 1954, it tendered to the Federal Power Commission, pursuant to the provisions of the Natural Gas Act and Federal Power Commission Order 174, as amended, as its Rate Schedule for the sale of gas to plaintiff under the contract dated June 23, 1950, as amended, (a) a copy of the said contract, as amended, and (b) a copy of the Kansas 11¢ price order, to which tender was attached a copy of the [fol. 625] billing rendered by defendant to plaintiff for gas delivered under the said contract, as amended, during the month of May, 1954; and that said letter of transmittal tendered for filing a rate of 11¢ per MCF at 14.65 psia for all gas sold and delivered by defendant to plaintiff under the said contract, as amended, from June 7, 1954, and until changed by further order of the Commission.

12. Defendant further alleges that by letter dated November 16, 1954, defendant mailed to plaintiff at its office

in Oklahoma City, Oklahoma, and plaintiff duly received a copy of said letter of transmittal which identified and described item by item every document tendered by defendant as a part of said Rate Schedule and that said letter of November 16, 1954, advised plaintiff of the acts of defendant set forth in paragraph "11", above.

13. Defendant further alleges that on January 26, 1955, defendant's said tender of November 16, 1954, was considered at a meeting of the Commissioners comprising the Federal Power Commission, and that at said meeting said Commissioners duly determined and voted to accept for filing and filed said contract of June 23, 1950, as amended, and said Kansas 11¢ order as defendant's FPC gas Rate Schedule No. 84 and Supplements 1 through 77 thereto, duly determined and voted that the price payable on June 7, 1954, under said Rate Schedule was 11¢ per MCF at 14.65 psia, duly determined and voted to accept 11¢ per MCF as the "rate in effect" on June 7, 1954, under said Rate Schedule until changed by further order of the Commission, and directed the Secretary of the Commission to advise defendant of said action by appropriate letter order. A certified copy of the official minutes of the Federal Power Com- [fol. 626] mission setting forth said Commission's action as described herein is attached to this Answer marked Exhibit "A", and by this reference made a part hereof as if fully set forth herein.

14. Defendant further alleges that by letter order dated March 2, 1955, the Federal Power Commission advised defendant of said Commission's action and determinations as described in paragraph "13", above, and that on or about said date plaintiff had notice of said letter order and a copy thereof was placed in the public files of the Federal Power Commission. A true copy of said letter order is attached to this Answer marked Exhibit "B", and by this reference made a part hereof as if fully set forth herein.

15. Defendant further alleges that by letter of transmittal dated June 28, 1957, with forwarding letter dated July 1, 1957, it tendered to the Federal Power Commission,

pursuant to the provisions of the Natural Gas Act and Federal Power Commission Order No. 174, as amended, a notice of a change in rate under its Rate Schedule No. 84 from 11¢ per MCF at 14.65 psia to 11.0715¢ per MCF at 14.63 psia covering reimbursement due defendant for payment of the 1% Kansas gas severance tax, effective July 1, 1957, per act of the Kansas Legislature House Bill No. 383 which imposed a tax of 1% of the effective sales price of gas. Copies of said letters are attached to this Answer marked Exhibit "C", and by this reference made a part hereof as if fully set forth herein.

16. Defendant further alleges that by letter dated June 28, 1957, defendant mailed to plaintiff at its office in Oklahoma City, Oklahoma, and plaintiff subsequently received, a copy of said letter of transmittal, and that said letter notified plaintiff that defendant was tendering said change [fol. 627] in Rate Schedule with the Federal Power Commission.

17. Defendant further alleges that on July 24, 1957, defendant's said tender of July 1, 1957, was considered at a meeting of the Commissioners comprising the Federal Power Commission, and that at said meeting said Commissioners duly determined and voted to accept for filing and filed said change in Rate Schedule as Supplement No. 80 to defendant's Rate Schedule No. 84, duly determined and voted that said change in Rate Schedule should be effective July 1, 1957, duly determined and voted to accept 11.0715¢ per MCF as the rate in effect on July 1, 1957, under defendant's said Rate Schedule No. 84 until changed by further order of the Commission and directed the Secretary of the Commission to advise defendant of said action by appropriate letter order. A certified copy of the official minutes of the Federal Power Commission setting forth said Commission's action as described herein, is attached to this Answer marked Exhibit "D", and by this reference made a part hereof as if fully set forth herein.

18. Defendant further alleges that by letter order dated August 19, 1957, the Federal Power Commission advised defendant of said Commission's action and determinations

as described in paragraph "17", above, and that on or about said date plaintiff had notice of said letter order, and a copy thereof was placed in the public files of the Federal Power Commission. A true copy of said letter order is attached to this Answer marked Exhibit "E", and by this reference made a part hereof as if fully set forth herein.

19. Defendant further alleges that plaintiff could have, but well knowing of its rights, wilfully and specifically [fol. 628] failed, neglected and refused to protest to the Federal Power Commission any of the filings with the Federal Power Commission by defendant of said documents as its Rate Schedule; or to protest to the Federal Power Commission defendant's filing of an 11¢ per MCF rate for said sale as set forth in paragraphs "11" and "15", above; or to petition the Federal Power Commission for a rehearing on the Commission's determinations and actions which were published by the issuance of said letter orders as set forth in paragraphs "13" and "17", above; or to seek judicial review of said orders of the Federal Power Commission as provided by Section 19(b) of the Natural Gas Act.

20. Defendant alleges that each of said Federal Power Commission's determinations and actions was duly made and constitutes defendant's effective filed Rate Schedule and defendant's effective filed rates covering gas sold under said Rate Schedule during the period beginning June 7, 1954, to and including June 30, 1957, and from and after July 1, 1957, has become final and is in full force and effect with respect to the period of time applicable thereto, but that plaintiff by bringing this action to recover from defendant a portion of the authorized and legally established effective rate paid by plaintiff to defendant for gas purchased under said contract is seeking to annul and set aside said Federal Power Commission's final determinations and actions.

21. Defendant further alleges that by reason of the foregoing, the said 11¢ per MCF at 14.65 psia has at all times on and after June 7, 1954, to and including June 30, 1957, and the said 11.0715¢ per MCF at 14.65 psia has at all times from and after July 1, 1957, been the only lawfully

[fol. 629] filed rates for gas sold under said Rate Schedule, and that this suit by plaintiff constitutes an unlawful collateral attack on each of said Federal Power Commission's final determinations and actions, and plaintiff is not entitled to maintain this action and is entitled to no recovery herein.

Fourth Defense

22. Defendant incorporates herein the allegations contained in its Third Defense of this Answer, and further alleges that the defendant has not filed said alleged written refund contract as part of its Rate Schedule under which the subject gas is sold; that plaintiff has not requested defendant to file said alleged written refund contract as part of said Rate Schedule, nor protested to the Federal Power Commission the failure of defendant to file said alleged written refund contract as part of its rate schedule; that said alleged written refund contract is not part of the effective rate schedule under which the subject gas is sold to plaintiff by defendant; and that said alleged written refund contract is without force and effect between plaintiff and defendant, by reason of which plaintiff is entitled to no recovery herein.

Fifth Defense

23. Defendant incorporates herein the denials contained in paragraph number "4" of this Answer and alleges that neither the State of Kansas nor the Kansas Corporation Commission nor the defendant has ever taken any action against plaintiff or sought to impose any penalties on plaintiff, or threatened so to do, in the event plaintiff failed to pay to defendant the value which producers were, under the [fol. 630] Kansas Minimum Price Order, required to receive for or attribute to gas produced from the Hugoton Field, Kansas. A copy of the Kansas Corporation Commission orders dated July 18, 1956, and August 31, 1956, in Docket No. 52417-C (C-5040) holding that said Kansas Minimum Price Order cannot be used to compel pipeline purchasers to pay producers and royalty owners said minimum price is attached to this Answer, set out verbatim, marked Ex-

hibit "F", and by this reference made a part hereof as if fully set forth herein.

24. Defendant further alleges that, if plaintiff had not voluntarily elected to pay unqualifiedly the 11¢ price but had elected to resist payment thereof by lawful means available to it, plaintiff could have

(a) diligently prosecuted its action in the District Court of Finney County, Kansas, for judicial review of the validity of said State Minimum Price Order under Section 55-707, G. S. Kansas 1949 but, to the contrary, plaintiff wilfully delayed the trial of said action in said Court for over two years, notwithstanding that said Commission filed a motion to dismiss plaintiff's said appeal for lack of prosecution and notwithstanding that Section 55-606, G. S. Kansas 1949 provides that appeals from orders of said State Commission shall have precedence and on motion shall be advanced over any other civil cause of a different nature,

(b) if the foregoing method of review was not adequate, Section 55-606, G. S. Kansas 1949 reserved to plain- [fol. 631] tiff the usual equitable remedies, and plaintiff could have brought an equitable action in the State Courts, or

(c) in the alternative, under 28 *USCA* 1337 plaintiff could have brought an equitable action in the Federal District Court, or

(d) as another pipeline company did, plaintiff could have brought an action for declaratory judgment to determine the price payable for gas delivered on and after January 1, 1954.

Defendant alleges that, depending on which of the above available remedies plaintiff elected to pursue, plaintiff could have under either a supersedeas *pendente lite*, or *pendente lite* under a temporary restraining order or temporary injunction, or other intermediate remedy avoided paying to defendant the Kansas minimum price until the

validity of said minimum price order was finally determined. A copy of said Sections 55-606 and 55-707, G. S. Kansas 1949 is attached to this Answer, set out verbatim, marked Exhibit "G", and by this reference made a part hereof as if fully set forth herein.

Defendant further alleges that if plaintiff had not intended to pay defendant 11¢ per MCF at 14.65 psia voluntarily and unconditionally, it would have protested the filing of 11¢ per MCF at 14.65 psia as the filed rate and, upon an adverse final Commission determination, it would have prosecuted a judicial review thereof and thus have avoided unconditional and voluntary payment of what it now al- [fol. 632] leges to be excess amounts, all of which action plaintiff followed in the case of another producer similarly situated.

25. Defendant further incorporates herein the denials contained in paragraphs numbered "4", "5", "7", "7A", "8" and "9" of this Answer and further alleges that defendant did not demand or otherwise solicit payment of said 11¢ price from plaintiff or threaten to reduce or to discontinue deliveries of gas to plaintiff if said price was not paid, but that, without defendant having made any request therefor, plaintiff voluntarily offered to pay 11¢ per MCF at 14.65 psia for said gas and did voluntarily pay such price for said gas purchased by it from January 1, 1954, to November 22, 1957, inclusive. Defendant further alleges that, as plaintiff well knew, Section 7(b) of the Natural Gas Act (15 *USCA* 717f (b)) prohibited defendant from discontinuing or reducing deliveries of gas to plaintiff without first having obtained the Federal Power Commission's permission granted after a full and public hearing, and that no application for such permission has ever been filed by defendant with said Commission.

Defendant further alleges that, even had it obtained permission to discontinue deliveries to plaintiff, before it could have discontinued deliveries to plaintiff under said contract, it would have also been required to give at least thirty days' notice to plaintiff and to said Commission of the cancellation of defendant's rate schedule, as provided by Section 154.97 of the Federal Power Commission Rules

and Regulations (18 CFR 154.97), and that defendant never gave or threatened to give said notice of cancellation.

26. Defendant further alleges that, under Kansas and Delaware law, a statement that a payment is made under [fol. 633] protest or under duress is no more than a gesture unless within a reasonable time the alleged protestant commences and diligently prosecutes legal proceedings to determine the validity of its alleged claim, and that plaintiff failed to prosecute diligently any such proceedings. Defendant further alleges that plaintiff's conduct from January 1, 1954, through January 20, 1958, was inconsistent with its alleged statements that payments were made under protest and under duress, and said statements were contrary to the actual circumstances under which said payments were made.

27. Defendant further alleges that plaintiff in its complaint has alleged that it paid defendant said 11¢ price because it was compelled to do so by the purportedly valid Kansas Minimum Price Order, which allegation is an allegation of payment based on a mistake of law, and under Kansas and Delaware law payment based on mistake of law constitutes a voluntary payment.

Defendant further alleges that, by reason of the foregoing, each of plaintiff's payments to defendant of the price of 11¢ per MCF at 14.65 psia from January 1, 1954, through November 22, 1957, was, under Kansas and Delaware law, a voluntary payment of said price, that, under Kansas and Delaware law, voluntary payments cannot be recovered; and plaintiff is, therefore, entitled to no recovery herein.

Sixth Defense

28. Defendant alleges that plaintiff has continuously, and for its special benefit, since January 1, 1954, justified the level of its rates to its customers by taking the position before the Federal Power Commission in proceedings in- [fol. 634] volving its rates that the 11¢ per MCF price under said contract is the filed rate of defendant and that the same is final, unconditional and without expectation of refund of any part thereof. Defendant alleges that plaintiff

has at all times involved herein collected and continues to collect from its purchasers a price based upon the payment by it to defendant of a price of 11¢ per MCF at 14.65 psia for gas purchased from defendant under said contract.

Defendant further alleges that, by reason of the above reliance by the plaintiff for its special benefit on its right to retain the benefits resulting from its collection from its customers of a rate based on payment to defendant and other producers of the 11¢ price for Kansas-Hugoton gas, plaintiff is estopped from asserting the invalidity of said order in order to claim for itself money received from its customers and paid to defendant based upon the price provided in said order, and plaintiff is entitled to no recovery herein.

Seventh Defense

29. Defendant incorporates herein all of the allegations of plaintiff's acts, omissions and conduct contained in its Third through Sixth Defenses of this Answer, and further alleges that, with plaintiff's knowledge and acquiescence, defendant, during the time involved herein, and based upon the unconditional receipt by it of the 11¢ price for gas purchased under said contract, paid over to royalty owners and other working interest owners a substantial portion of the proceeds received from plaintiff and expended large sums improving its ability to produce gas from the leases [fol. 635] committed to said contract to the benefit of plaintiff.

30. Defendant further alleges that said contract was created by the laws of Kansas and the sale of gas thereunder is performed in Kansas, and that, by said various and divers acts, omissions and conduct as alleged herein, plaintiff has agreed to and acquiesced in a modification of the pricing provisions of said contract so as to provide that effective January 1, 1954, the price payable for gas purchased under said contract is 11¢ per MCF at 14.65 psia with an adjustment for deviation from Boyle's Law; that plaintiff is estopped to contend otherwise, that, under Kansas and Delaware law, said acts, omissions, and conduct constitute agreement to and acquiescence in said modifica-

tion of the pricing provisions of said contract, that plaintiff is by said State law estopped to deny the same, and that said price was lawfully, and with plaintiff's consent, filed by defendant as the price payable under said contract on June 7, 1954, by virtue of the pricing provisions thereof, and the Federal Power Commission lawfully determined such to be the case and so accepted defendant's rate schedules covering said contract, by reason of which plaintiff is entitled to no recovery herein.

Eighth Defense

31. Defendant incorporates herein all of its allegations of plaintiff's acts, omissions, and conduct contained in the Third through Sixth Defenses of this Answer and further alleges that in any event, even if plaintiff's alleged protest to payment was initially valid, said protest was limited by its terms to a protest against payment of the minimum price fixed by order of the Kansas Corporation Commission [fol. 636] and not against payment of the regulated price authorized by the Federal Power Commission as defendant's effective rate for gas sold pursuant to said contract, and further that plaintiff by said acts, omissions, and conduct subsequently abandoned and repudiated said protest. Defendant further alleges that in any event, even if plaintiff's payments were initially involuntary, under Kansas law, they became voluntary on June 7, 1954, and were voluntary thereafter, by reason of which plaintiff is entitled to no recovery herein.

Ninth Defense

32. Defendant incorporates herein the allegations contained in its Sixth Defense of this Answer and further alleges that plaintiff is attempting herein to recovery from defendant money which it has received from its customers based upon the unconditional payment by it to defendant of said 11¢ price; that plaintiff will not and, as a practical matter cannot, refund to each ultimate consumer of the gas involved herein said consumer's pro rata share of any recovery by plaintiff herein; and that to permit plaintiff to

recover herein would constitute an unconscionable windfall to plaintiff and unjustly enrich plaintiff.

33. Defendant alleges that plaintiff and Cities Service Oil Company (Delaware) are each wholly owned subsidiaries of Empire Gas and Fuel Company, a Delaware corporation, which in turn is a wholly owned subsidiary of Cities Service Company, a Delaware corporation; that Cities Service Gas Producing Company is a wholly owned subsidiary of plaintiff; that Cities Service Oil Company and Cities Service Gas Producing Company, during the period com- [fol. 637] mencing January 1, 1954, and ending sometime in November or December of 1957, have under substantially identical circumstances as are involved herein, collected from interstate pipeline purchasers the same rates and charges as were paid to defendant by plaintiff herein; that said pipeline purchasers, *inter alia* Kansas-Nebraska Natural Gas Company and Northern Natural Gas Company, have demanded that Cities Service Oil Company refund the difference between the amounts so collected and the price that would have otherwise been effective on June 7, 1954, under its gas sales contracts; that said affiliate of plaintiff has failed and refused to refund said amounts and has vigorously resisted the efforts of its pipeline purchasers to compel refunds, and to the best of defendant's knowledge and information continues to vigorously resist all efforts to secure the payment of said refunds.

34. Defendant further alleges that, based upon the acts, omissions and conduct of plaintiff alleged in the Third through Sixth Defenses of this Answer which allegations by this reference are hereby incorporated herein, defendant reasonably relied on the unconditional payment of said 11¢ price by plaintiff for said gas, and, based upon said payment of said price, paid over to royalty owners and expended in improving and in maintaining improved delivery of gas to plaintiff a large part of what plaintiff now alleges to be excess payments, that said expenditures by defendant benefited plaintiff, that plaintiff, with knowledge of said circumstances under which said benefits were rendered to it, nevertheless accepted said benefits without reservation or protest and retained the same, that said 11¢ price paid by

plaintiff is the reasonable value of the gas delivered by [fol. 638] defendant to plaintiff during the time plaintiff now alleges it made excess payments, and that to permit plaintiff to recover herein would constitute an unconscionable windfall to plaintiff and unjustly enrich plaintiff, by reason of which plaintiff is entitled to no recovery herein.

Tenth Defense

35. Defendant alleges that plaintiff is herein seeking to recover, based upon what it now alleges to be its right to have paid a rate other than the authorized effective rate for gas sold under defendant's Rate Schedule No. 84 and, consequently, is seeking to have this court change the effective rate for gas sold under said rate schedule to a rate that is not the effective legal rate authorized by the Federal Power Commission; that the Federal Power Commission has exclusive primary jurisdiction in proceedings to modify said effective rates; and that this court is without jurisdiction to change said effective rates or jurisdiction over plaintiff's claim that it was entitled to pay less than the authorized effective rates which were actually paid by it, by reason of which this court is without jurisdiction over plaintiff's claim, and plaintiff is not entitled to maintain this action or entitled to any recovery herein.

Eleventh Defense

36. Claims for all or a portion of the payments made by plaintiff to defendant referred to in the complaint are barred by the statute of limitations of Delaware and the statutes of limitations of such other jurisdictions as might be applicable.

Twelfth Defense

37. Defendant alleges that plaintiff's alleged written re- [fol. 639] fund contract is not supported by consideration, and that the same is therefore not enforceable against defendant, by reason of which plaintiff is entitled to no recovery herein.

Counterclaim

38. Defendant incorporates herein all of the foregoing admissions, denials and allegations of this Answer, and for its counterclaim further alleges that from November 23, 1957, through April 22, 1959, the last date for which defendant knows the volumes of gas purchased, defendant delivered gas to plaintiff under said rate schedule; that the present contract price and the present effective rate for said gas was at all times 11.0715¢ per MCF at 14.65 psia; that plaintiff is obligated to pay said effective rate, but that plaintiff has wrongfully refused to make payment at said rate, by reason of which plaintiff is indebted to defendant for gas delivered during said period in the amount of three million eight hundred eighty-eight thousand six hundred forty-seven and 26/100 dollars ($3,888,647.26), and defendant is entitled to recover the same from plaintiff.

Wherefore, defendant prays that plaintiff recover nothing on its complaint herein, that the complaint be dismissed without prejudice, that defendant recover from plaintiff the sum of $3,888,647.26 plus costs and disbursements of this action and be granted any other further relief to which defendant may be entitled.

Morris, Nichols, Arsht & Tunnell, James M. Tunnell, Jr., 3000 duPont Building, Wilmington, Delaware, Attorneys for Defendant.

Of Counsel: W. W. Heard, Esq., Karl R. Goldsmith, Esq., P. O. Box 591, Tulsa, Oklahoma.

[fol. 640]

Exhibit A to Answer

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

I, Joseph H. Gutride, Secretary of the Federal Power Commission, and official custodian of the minutes of said Commission, do hereby certify that the attached page number 53320 is a true and correct copy of an excerpt from the Commission's minutes of January 26, 1955, and that

the attached page number 53473 is a true and correct copy of sheet number 2 of Table 1 of Table IP No. 85 referred to therein.

In witness whereof I have hereunto subscribed my name and caused the seal of the Federal Power Commission to be affixed this 6th day of February, A. D., 1959, at Washington, D. C.

/s/ J. H. GUTRIDE
Secretary,

[Seal]

[fol. 641] 53320

Minutes—meeting January 26, 1955 — 5 —

The Commission considered the rate filings identified on the attached Tables 1, 2, 3 and 4, IP 78, dated January 18, 1955, and voted to accept all of them, and that for all tax increases filed on or before October 1, 1954, notice be waived to establish the requested effective dates; but that for those tax changes filed after October 1, 1954, notice be waived to establish the dates of filing or the dates requested, whichever are later, as the effective dates. The filing companies are to be advised of this action by appropriate form letters.

****

The Commission considered the rate filings identified on the attached Tables 1, 2, 3 and 4, IP 84, dated January 19, 1955, and voted to accept all of them, and that for tax increases and the other changes reported on Table 4, notice be waived to establish the date of filing or the date requested, whichever is later, as the effective date. The filing companies are to be advised of this action by appropriate form letters.

****

The Commission considered the rate filings identified on the attached Tables 1, 2, 3, 4 and 5, IP 85, dated January 20, 1955, and voted to accept all of them, that notice be waived to establish the requested effective dates for all tax increases filed on or before

October 1, 1954; and that for those tax changes filed after October 1, 1954, notice be waived to establish the dates of filing or the dates requested, which ever are later, as the effective date. The filing companies are to be advised of this action by appropriate form letters.

****

The Commission considered the rate filings identified on the attached Table, IP 90, dated January 25, 1955, and suspended the filings listed on Lines 19 and 20, Sheet 1, until March 1, 1955, and voted to accept all of the other filings, with waiver of notice to be granted only for the tax increases to the extent necessary to permit them to become effective on the dates of filing; the other increases to be effective 30 days after filing, or the proposed effective dates, whichever are later. The filing companies are to be advised of this action by appropriate form letters.

****

The Commission approved a letter to the Empire District Electric Company, advising, in response to its letter of December 13, 1954, that its Rate Schedules FPC Nos. 65 and 68, and Exhibit A to Rate Schedule FPC No. 68, have been accepted for filing, to become effective on February 7, 1955.

****

JAN 1955
IP NO 86

SUMMARY OF INDEPENDENT PRODUCER RATE FILINGS
RATES IN EFFECT ON JUNE 7, 1954

TABLE NO 1
SHEET 2 OF 23

LINE NO.	FILING COMPANY (Continued from previous sheet)	DESIGNATION: RATE SCHEDULE NO.	DESIGNATION: SUPPLEMENT NO.	DESCRIPTION AND DATE OF DOCUMENT	DATE OF CONFIDENTIAL LETTER	FILING DATE	BUYER	PRICE JUNE 7, 1954 (¢ PER MCF)	COMMISSION SERVICE CONTROL SERIAL NO.
43	STANOLIND Oil & Gas Co.	84	42	Assignment 7-8-53	11-15-54	11-16-54	Cities Service Gas Company		164277
44	511 South Boston Avenue	84	43	Release 7-14-53	"	"	(Hugoton Field, Kansas)		
45	Tulsa 3, Oklahoma.	84	44	Letter - 7-17-53	"	"	"		
46	"	84	45	Letter 7-27-53	"	"	"		
47	"	84	46	Letter 8-7-53	"	"	"		
48	"	84	47	Release 9-9-53	"	"	"		
49	"	84	48	Sub. Agree. 10-27-53	"	"	"		
50	"	84	49	Letter 11-4-53	"	"	"		
51	"	84	50	Sub. Agree. 11-19-53	"	"	"		
52	"	84	51	Release 11-30-53	"	"	"		
53	"	84	52	Letter 12-9-53	"	"	"		
54	"	84	53	Letter 1-8-54	"	"	"		
55	"	84	54	Letter 1-20-54	"	"	"		
56	"	84	55	Letter 2-8-54	"	"	"		
57	"	84	56	Sub. Agree. 2-15-54	"	"	"		
58	"	84	57	Letter 3-4-54	"	"	"		
59	"	84	58	Letter 3-12-54	"	"	"		
60	"	84	59	Letter 4-2-54	"	"	"	→ 11.	
61	"	84	60	Letter 4-27-54	"	"	"		
62	"	84	61	Letter 5-14-54	"	"	"		
63	"	84	62	Letter 5-19-54	"	"	"		
64	"	84	63	Letter 5-19-54	"	"	"		
65	"	84	64	Letter 6-7-54	"	"	"		
66	"	84	65	Letter 1/ 6-25-54	"	"	"		
67	"	84	66	Letter 1/ 6-25-54	"	"	"		
68	"	84	67	Letter 1/ 6-25-54	"	"	"		
69	"	84	68	Letter 1/ 7-7-54	"	"	"		
70	"	84	69	Letter 1/ 7-9-54	"	"	"		
71	"	84	70	Letter 1/ 7-9-54	"	"	"		
72	"	84	71	Letter 1/ 7-22-54	"	"	"		
73	"	84	72	Letter 1/ 8-3-54	"	"	"		
74	"	84	73	Letter 1/ 8-4-54	"	"	"		
75	"	84	74	Letter 1/ 8-13-54	"	"	"		
76	"	84	75	Letter 1/ 8-19-54	"	"	"		
77	"	84	76	Letter 1/ 8-25-54	"	"	"		
78	"	84	77	Kan. C.C. Order 3/ 12-2-53	"	"	"		

[fol. 643]

EXHIBIT B TO ANSWER

Address all Communications
to the Secretary

FEDERAL POWER COMMISSION
Washington 25

MAR -2 1955

Stanolind Oil & Gas Co.
511 South Boston Avenue
Tulsa 3, Oklahoma

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the rates being charged June 7, 1954, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 174-B. The Act and the Commission's rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual

right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

Very truly yours,

/s/ LEON M. FUQUAY
Secretary

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
	Stanolind Oil & Gas Co.	
Contract dated 6/23/50	11/15/54	F.P.C. Gas Rate Schedule No. 84
Letter dated 7/28/50	11/15/54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 84
Letter dated 7/28/50	11/15/54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 84
Letter dated 8/8/50	11/15/54	Supplement No. 3 to F.P.C. Gas Rate Schedule No. 84
[fol. 644]		
Supp. Agree. dated 10/3/50	11/15/54	Supplement No. 4 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 10/3/50	11/15/54	Supplement No. 5 to F.P.C. Gas Rate Schedule No. 84
Letter dated 10/11/50	11/15/54	Supplement No. 6 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 10/16/50	11/15/54	Supplement No. 7 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 11/22/50	11/15/54	Supplement No. 8 to F.P.C. Gas Rate Schedule No. 84
Letter dated 11/29/50	11/15/54	Supplement No. 9 to F.P.C. Gas Rate Schedule No. 84

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
Supp. Agree. dated 12/13/50	11/15/54	Supplement No. 10 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 2/5/51	11/15/54	Supplement No. 11 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 2/23/51	11/15/54	Supplement No. 12 to F.P.C. Gas Rate Schedule No. 84
Letter dated 5/18/51	11/15/54	Supplement No. 13 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 5/31/51	11/15/54	Supplement No. 14 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 6/25/51	11/15/54	Supplement No. 15 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 7/2/51	11/15/54	Supplement No. 16 to F.P.C. Gas Rate Schedule No. 84
Letter dated 7/25/51	11/15/54	Supplement No. 17 to F.P.C. Gas Rate Schedule No. 84
Letter dated 7/25/51	11/15/54	Supplement No. 18 to F.P.C. Gas Rate Schedule No. 84
[fol. 645]		
Letter dated 8/29/51	11/15/54	Supplement No. 19 to F.P.C. Gas Rate Schedule No. 84
Letter dated 8/31/51	11/15/54	Supplement No. 20 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 10/16/51	11/15/54	Supplement No. 21 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 10/25/51	11/15/54	Supplement No. 22 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 2/19/52	11/15/54	Supplement No. 23 to F.P.C. Gas Rate Schedule No. 84

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
upp. Agree. dated 4 11 52	11/15/54	Supplement No. 24 to F.P.C. Gas Rate Schedule No 84
upp. Agree. dated 5 6 52	11/15/54	Supplement No. 25 to F.P.C. Gas Rate Schedule No. 84
upp. Agree. dated 6 27 52	11/15/54	Supplement No. 26 to F.P.C. Gas Rate Schedule No. 84
upp. Agree. dated 7 17 52	11/15/54	Supplement No. 27 to F.P.C. Gas Rate Schedule No. 84
upp. Agree. dated 7 25 52	11/15/54	Supplement No. 28 to F.P.C. Gas Rate Schedule No. 84
upp. Agree. dated 11 12 52	11/15/54	Supplement No. 29 to F.P.C. Gas Rate Schedule No. 84
elease dated 3/16/53	11/15/54	Supplement No. 30 to F.P.C. Gas Rate Schedule No. 84
upp. Agree. dated 5 25 53	11/15/54	Supplement No. 31 to F.P.C. Gas Rate Schedule No. 84
upp. Agree. dated 5 28 53	11/15/54	Supplement No. 32 to F.P.C. Gas Rate Schedule No. 84
elease dated 6/8/53	11/15/54	Supplement No. 33 to F.P.C. Gas Rate Schedule No. 84
ol. 646]		
tter dated 6/8/53	11/15/54	Supplement No. 34 to F.P.C. Gas Rate Schedule No. 84
tter dated 6/9/53	11/15/54	Supplement No. 35 to F.P.C. Gas Rate Schedule No. 84
tter dated 6/9/53	11/15/54	Supplement No. 36 to F.P.C. Gas Rate Schedule No. 84
upp. Agree. 6/19/53	11/15/54	Supplement No. 37 to F.P.C. Gas Rate Schedule No. 84

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
Letter dated 6/26/53	11/15/54	Supplement No. 38 to F.P.C. Gas Rate Schedule No. 84
Letter dated 6/26/53	11/15/54	Supplement No. 39 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 7/7/53	11/15/54	Supplement No. 40 to F.P.C. Gas Rate Schedule No. 84
Letter dated 7/7/53	11/15/54	Supplement No. 41 to F.P.C. Gas Rate Schedule No. 84
Assignment dated 7/8/53	11/15/54	Supplement No. 42 to F.P.C. Gas Rate Schedule No. 84
Release dated 7/14/53	11/15/54	Supplement No. 43 to F.P.C. Gas Rate Schedule No. 84
Letter dated 7/17/53	11/15/54	Supplement No. 44 to F.P.C. Gas Rate Schedule No. 84
Letter dated 7/27/53	11/15/54	Supplement No. 45 to F.P.C. Gas Rate Schedule No. 84
Letter dated 8/7/53	11/15/54	Supplement No. 46 to F.P.C. Gas Rate Schedule No. 84
Release dated 9/9/53	11/15/54	Supplement No. 47 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 10/27/53	11/15/54	Supplement No. 48 to F.P.C. Gas Rate Schedule No. 84
Letter dated 11/4/53	11/15/54	Supplement No. 49 to F.P.C. Gas Rate Schedule No. 84
[fol. 647] Supp. Agree. dated 11/19/53	11/15/54	Supplement No. 50 to F.P.C. Gas Rate Schedule No. 84
Release dated 11/30/53	11/15/54	Supplement No. 51 to F.P.C. Gas Rate Schedule No. 84
Letter dated 12/9/53	11/15/54	Supplement No. 52 to F.P.C. Gas Rate Schedule No. 84

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
Letter dated 1/8/54	11/15/54	Supplement No. 53 to F.P.C. Gas Rate Schedule No. 84
Letter dated 1/20/54	11/15/54	Supplement No. 54 to F.P.C. Gas Rate Schedule No. 84
Letter dated 2/8/54	11/15/54	Supplement No. 55 to F.P.C. Gas Rate Schedule No. 84
Supp. Agree. dated 2/15/54	11/15/54	Supplement No. 56 to F.P.C. Gas Rate Schedule No. 84
Letter dated 3/4/54	11/15/54	Supplement No. 57 to F.P.C. Gas Rate Schedule No. 84
Letter dated 3/12/54	11/15/54	Supplement No. 58 to F.P.C. Gas Rate Schedule No. 84
Letter dated 4/2/54	11/15/54	Supplement No. 59 to F.P.C. Gas Rate Schedule No. 84
Letter dated 4/27/54	11/15/54	Supplement No. 60 to F.P.C. Gas Rate Schedule No. 84
Letter dated 5/14/54	11/15/54	Supplement No. 61 to F.P.C. Gas Rate Schedule No. 84
Letter dated 5/19/54	11/15/54	Supplement No. 62 to F.P.C. Gas Rate Schedule No. 84
Letter dated 5/19/54	11/15/54	Supplement No. 63 to F.P.C. Gas Rate Schedule No. 84
Letter dated 6/7/54	11/15/54	Supplement No. 64 to F.P.C. Gas Rate Schedule No. 84
Letter dated 6/25/54	11/15/54	Supplement No. 65 to F.P.C. Gas Rate Schedule No. 84
[fol. 648] Letter dated 6/25/54	11/15/54	Supplement No. 66 to F.P.C. Gas Rate Schedule No. 84
Letter dated 6/25/54	11/15/54	Supplement No. 67 to F.P.C. Gas Rate Schedule No. 84

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
Letter dated 7/7/54	11/15/54	Supplement No. 68 to F.P.C. Gas Rate Schedule No. 8
Letter dated 7/9/54	11/15/54	Supplement No. 69 to F.P.C. Gas Rate Schedule No. 8
Letter dated 7/9/54	11/15/54	Supplement No. 70 to F.P.C. Gas Rate Schedule No. 8
Letter dated 7/22/54	11/15/54	Supplement No. 71 to F.P.C. Gas Rate Schedule No. 8
Letter dated 8/3/54	11/15/54	Supplement No. 72 to F.P.C. Gas Rate Schedule No. 8
Letter dated 8/4/54	11/15/54	Supplement No. 73 to F.P.C. Gas Rate Schedule No. 8
Letter dated 8/13/54	11/15/54	Supplement No. 74 to F.P.C. Gas Rate Schedule No. 8
Letter dated 8/19/54	11/15/54	Supplement No. 75 to F.P.C. Gas Rate Schedule No. 8
Letter dated 8/25/54	11/15/54	Supplement No. 76 to F.P.C. Gas Rate Schedule No. 8
Kan. C.C. Order dated 12/2/53	11/15/54	Supplement No. 77 to F.P.C. Gas Rate Schedule No. 8

[fol. 649]

EXHIBIT C TO ANSWER

June 28, 1957

Letter of Transmittal

Notice Relative to Rate Schedule No. 84 of PAN AMERICAN PETROLEUM CORPORATION, an Independent Producer in Compliance with Federal Power Commission Order No. 174-B (Pan American Contract No. 18,196)	Supplement No. 80 to Rate Schedule No. 84

Secretary
Federal Power Commission
Washington 25, D. C.

Dear Sir:

This filing is made subject to all of the reservations set out in the Application for a Certificate of Public Convenience and Necessity in Docket No. G-4904 and in the original filing of the captioned contract as an Initial Rate Schedule. Pan American denies that it is a natural gas company under the Natural Gas Act or that it is subject to the jurisdiction of the Commission with respect to the transaction referred to herein, but in compliance with the regulations of the Commission submits this notice of a change in price.

Pursuant to Order No. 197 issued by the Commission on May 23, 1957, the following is submitted:

1. This filing is submitted pursuant to Commission Order No. 197 to reflect 65% reimbursement of the Kansas gas severance tax of 1% effective July 1, 1957 levied on producers by act of the Kansas Legislature in House Bill No. 383.

2. Such reimbursement is provided by Article XII of the contract dated June 23, 1950, between Pan American Petroleum Corporation and Cities Service Gas Company

on file with the Commission and designated Pan American FPC Gas Rate Schedule No. 84.

3. A copy of this filing was served on the buyer as required by the Commission's Regulations on June 28, 1957.

4. Comparison of prices prior to and subsequent to such change in price (Cents per MCF):

Date	Base Price Per Mcf	Tax Reimbursement Per Mcf	Total Price Per Mcf
June 30, 1957	11¢	—0—	11¢
July 1, 1957	11¢	.0715¢	11.0715¢

Sales for 12 months ending March 31, 1957 58,489,163 Mcf. (on 14.65 # pressure base)

[fol. 650] This filing is being made under the compulsion of Order No. 174-B, which was issued without notice and a hearing. The undersigned believes that said order is subject to certain procedural defects and that, in some respects, it exceeds the authority delegated to the Commission by the Natural Gas Act and is, therefore, to that extent invalid. In addition, it is impossible, in this instance, for the undersigned to determine with certainty whether said order applies to it. The undersigned does not desire to incur the penalties which would be imposed upon it for violating those portions of the order which are of questionable meaning or of doubtful validity, especially in the event the order is ultimately determined to be definite or valid in those respects. Therefore, this filing is made under protest without prejudice to the undersigned's right to attack the validity of said order by pending or future proceedings before the Commission or in the courts, and nothing herein shall be deemed to constitute a waiver of said right. If it should be judicially determined that said order is invalid as to others in respects which are applicable to the undersigned, then the fact that the undersigned has, in the meantime, complied with said order shall not deprive it of its right thereafter to rely upon such determination.

This filing is made solely to comply with the provisions of Section 154.94 of Order No. 174-B. The undersigned reiterates that all contract prices and pricing provisions to which this notice refers are currently effective and operative under its contract and as parts of the initial Rate Schedule previously effective, filed with, and accepted by the Commission. A change in price pursuant to the provisions of said contract as constituted on the date of the initial filing thereof is not a "change" to the contract or Rate Schedule within the meaning of Section 4 of the Natural Gas Act, and is, therefore, not a "change in rate." The provisions of Section 154.94 or other sections of the rules, which purport to abrogate contract provisions, or require the filing of notices of "changes in rates" in such instances, are thus invalid to the extent that they are inconsistent with Section 4 of the Act. In transmitting this filing, the undersigned does not waive its objections to this requirement of the rules, or its right to raise such objection before the Commission or in the courts.

[fol. 651] This filing has no applicability to the prices and pricing provisions covered hereby to the extent that such prices and pricing provisions relate to sales of natural gas in intrastate commerce.

Please address all inquiries and correspondence in this matter to the following:

John F. Jones, Attorney
511 South Boston Avenue
Tulsa 3, Oklahoma

Respectfully submitted,

PAN AMERICAN PETROLEUM CORPORATION

By /s/ NORTON STANDEVEN
Norton Standeven, Attorney
P. O. Box 1654
Oklahoma City 1, Oklahoma

[fol. 652]

Law Offices
DOW, LOHNES and ALBERTSON
Munsey Building
Washington 4, D. C.

Telephone
Sterling 3-1000
Cable "DOWLOHNES"

July 1, 1957

Honorable Joseph H. Gutride
Secretary
Federal Power Commission
Washington 25, D. C.

Re: Supplement to Pan American Petroleum Corporation FPC Gas Rate Schedule No. 84 (Pan American Contract No. 18,196)

Dear Mr. Gutride:

On behalf of Pan American Petroleum Corporation, we hand you herewith for filing an original and two copies of the Supplement to the company's above-captioned Rate Schedule. This Supplement is in the form of a letter of transmittal under date of June 28, 1957, and over the signature of Norton Standeven, Esquire. It is respectfully requested that this material be accepted and filed forthwith and that we be advised of the fact of such filing. The purpose of this Supplement is to make the changes occasioned by the effectiveness of the severance tax levied by the State of Kansas.

Should any further correspondence be necessary, kindly address same to John F. Jones, Esquire, Pan American Petroleum Corporation, 511 South Boston Avenue, Tulsa 3, Oklahoma, with copies to Norton Standeven, Esquire, Pan American Petroleum Corporation, P. O. Box 1654, Oklahoma City 1, Oklahoma, and to the writer hereof.

Very truly yours,

/s/ RICHARD B. McENTIRE
Richard B. McEntire

encls

[fol. 653] EXHIBIT D TO ANSWER

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

I, Joseph H. Gutride, Secretary of the Federal Power Commission, and official custodian of the minutes of said Commission, do hereby certify that the attached page number 74065 is a true and correct copy of an excerpt from the Commission's minutes of July 24, 1957, and that the attached page number 74198 is a true and correct copy of sheet number 5 of Table 2 of Table IP No. 1314 referred to therein. In witness whereof I have hereunto subscribed my name and caused the seal of the Federal Power Commission to be affixed this 10th day of March, A.D., 1959, at Washington, D. C.

J. H. GUTRIDE
Secretary

[SEAL]

[fol. 654] 74065

The Commission considered the rate filings identified on the attached Tables 1, 2 and 3, IP 1314, dated July 24, 1957, and accepted all of them. No effective date was specified for the supplements completing June 7, 1954 rate schedules listed on Lines 5, 7, 9, 11, 13, 15, 17, 19, 20, 22, 23, 25, 26, 28, 29, 31, 32, 34, 35, 70, 72, 74 and 76 of Table 2. Waiver of notice was granted, where necessary, to permit all rate schedules listed on Table 1 and all supplements listed on Table 2 not mentioned above, to become effective on the date shown in the "Effective Date" column of the respective tables. All rate schedules listed on Table 3 are to be redesignated as shown and waiver of notice was granted to permit all notices of succession on said table to become effective on the date shown in the "Effective Date" column. The filing companies are to be advised of this action by appropriate letters.

Thereupon, the Commission adjourned.

/s/ FREDERICK STUECK
Acting Chairman

ATTEST:

/s/ J. H. GUTRIDE
Secretary

LINE NO.	FILING COMPANY AND MAILING ADDRESS	DESIGNATION: RATE SCHED. SUP. NO.	DESIGNATION: SUPPLE-MENT NO.	DESCRIPTION AND DATE OF INSTRUMENT	DATES: TRANSMITTAL LETTER	DATES: FILING	BUYER AND PRODUCING AREA	LAST PRICE PREVIOUSLY REPORTED ¢ PER MCF	INCREASE (DECREASE) ¢ PER MCF	PRICE AFTER INCREASE OR DECREASE ¢ PER MCF	PRESSURE BASE PSIA	ANNUAL AMOUNT OF INCREASE (DECREASE)
52	PAN AMERICAN PETROLEUM CORPORATION[1] 511 SOUTH BOSTON AVENUE TULSA 3, OKLAHOMA	38	4	NOTICE OF CHANGE 6-28-57	7-1-57	7-1-57	NORTHERN NATURAL GAS CO. (HUGOTON FIELD, HASKELL COUNTY, KANSAS)	11.0	0.055[2]	11.055	100	36
53	PAN AMERICAN PETROLEUM CORPORATION[1]	46	4	NOTICE OF CHANGE 6-28-57	7-1-57	7-1-57	COLORADO INTERSTATE GAS CO (HUGOTON FLD, FINNEY & KEARNY COS, KAN.)	11.0	0.055[2]	11.055	100	13
54	PAN AMERICAN PETROLEUM CORPORATION[1]	47	11	NOTICE OF CHANGE 6-28-57	7-1-57	7-1-57	NORTHERN NATURAL GAS CO. (HUGOTON FLD, HASKELL CO, KAN.)	11.0	0.055[2]	11.055	100	183
55	PAN AMERICAN PETROLEUM CORPORATION[1]	48	2	NOTICE OF CHANGE 6-28-57	7-1-57	7-1-57	KANSAS-NEBRASKA NATURAL GAS CO. (HUGOTON FLD., KEARNY CO., KANS.)	11.0	0.055[2]	11.055	100	4
56	PAN AMERICAN PETROLEUM CORPORATION[1]	49	2	NOTICE OF CHANGE 6-28-57	7-1-57	7-1-57	KANSAS-NEBRASKA NATURAL GAS CO (HUGOTON FLD, FINNEY CO, KAN.)	11.0	0.055[2]	11.055	100	55
57	PAN AMERICAN PETROLEUM CORPORATION[1]	50	3	NOTICE OF CHANGE 6-28-57	7-1-57	7-1-57	NORTHERN NATURAL GAS COMPANY (HUGOTON FLD, SEWARD CO, KANSAS)	11.0	0.055[2]	11.055	100	24
58	PAN AMERICAN PETROLEUM CORPORATION[1]	52	4	NOTICE OF CHANGE 6-28-57	7-1-57	7-1-57	NORTHERN NATURAL GAS CO. (HUGOTON FLD, HASKELL CO, KAN.)	11.0	0.055[2]	11.055	100	15
59	PAN AMERICAN PETROLEUM CORPORATION[1]	55	5	NOTICE OF CHANGE 6-28-57	7-1-57	7-1-57	NORTHERN NATURAL GAS CO (HUGOTON FLD, HASKELL & SEWARD COS, KANSAS)	11.0	0.055[2]	11.055	100	9
60	PAN AMERICAN PETROLEUM CORPORATION[1]	84	20	NOTICE OF CHANGE 6-28-57	7-1-57	7-1-57	CITIES SERVICE GAS COMPANY (HUGOTON FIELD	11.0	0.0715[2]	11.0715	100	61,820
61	PAN AMERICAN PETROLEUM CORPORATION[1]	111	2	NOTICE OF CHANGE 6-28-57	7-1-57	7-1-57	KANSAS-NEBRASKA NATURAL GAS CO (HUGOTON FLD, FINNEY CO, KAN.)	11.0	0.055[2]	11.055	100	17
62	PAN AMERICAN PETROLEUM CORPORATION[1]	123	3	NOTICE OF CHANGE 6-28-57	7-1-57	7-1-57	NORTHERN NATURAL GAS COMPANY (HUGOTON FLD SEWARD CO, KAN.)	11.0	0.055[2]	11.055	100	16
63	PAN AMERICAN PETROLEUM CORPORATION[1]	164	7	NOTICE OF CHANGE 6-28-57	7-1-57	7-1-57	MAGNOLIA PETROLEUM COMPANY (HUGOTON FLD, GRANT CO, KAN.)	11.0	0.055[2]	11.055	100	7

2/ INCREASE IN RATE DUE TO KANSAS SEVERANCE TAX OF 1% EFFECTIVE 7-1-57.

1/ cc: PAN AMERICAN PETROLEUM CORPORATION, BOX 1661, OKLAHOMA CITY 1, OKLAHOMA.

JUL 24 1957

I. P. No. 1314 Table 20-3 Sheet 5 of 7

ANNUAL AMOUNT OF INSURANCE (ORDINARY)	PROPOSED EFFECTIVE DATE	EFFECTIVE DATE (WHERE ISSUED) (OTHERWISE) (CREDITED)	CORRESPONDENCE CONTROL SERIAL NO. INITIALS
$ 36	7-1-57	7-1-57	7149
			TRM
13	7-1-57	7-1-57	7158
			TRM
183	7-1-57	7-1-57	7151
			TRM
4	7-1-57	7-1-57	7152
			TRM
86	7-1-57	7-1-57	7147
			TRM
24	7-1-57	7-1-57	7146
			TRM
15	7-1-57	7-1-57	7148
			TRM
9	7-1-57	7-1-57	7150
			TRM
41,820	7-1-57	7-1-57	7155
			TRM
17	7-1-57	7-1-57	7143
			TRM
16	7-1-57	7-1-57	7145
			TRM
7	7-1-57	7-1-57	7141

[fol. 656] EXHIBIT E TO ANSWER

Address all Communications
to the Secretary

FEDERAL POWER COMMISSION
Washington 25

AUG 19 1957

Pan American Petroleum Corporation
511 South Boston Avenue
Tulsa 3, Oklahoma

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing, that notice is hereby waived to permit such rate schedule to be effective as of the date of filing or such later date as requested, as shown below.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price redetermination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the effective rates and charges, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 174-B. The Act and the Commission's Rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation

associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

In future correspondence with the Commission concerning the rate schedules listed below, please refer to the FPC Gas Rate Schedule designation furnished you herewith, including the name of the independent producer and the rate schedule and supplement numbers.

By direction of the Commission.

/s/ J. H. Gutride

J. H. Gutride
Secretary

[fol. 657]

		Rate Schedule Designation		
		Pan American Petroleum Corporation		
Description of Document	Date of Letter of Transmittal	FPC Gas Rate Schedule No.	Supplement No.	Effective Date
Notice of Change 6-28-57	7-1-57	38	4	7-1-57
Notice of Change 6-28-57	7-1-57	46	4	7-1-57
Notice of Change 6-28-57	7-1-57	47	11	7-1-57
Notice of Change 6-28-57	7-1-57	48	2	7-1-57
[fol. 657]				
Notice of Change 6-28-57	7-1-57	49	2	7-1-57
Notice of Change 6-28-57	7-1-57	50	3	7-1-57
Notice of Change 6-28-57	7-1-57	52	4	7-1-57
Notice of Change 6-28-57	7-1-57	55	5	7-1-57
Notice of Change 6-28-57	7-1-57	84	80	7-1-57
Notice of Change 6-28-57	7-1-57	111	2	7-1-57
Notice of Change 6-28-57	7-1-57	143	3	7-1-57
Notice of Change 6-28-57	7-1-57	164	7	7-1-57

cc: Dow Lohnes and Albertson, Munsey Building, Washington 4, D. C.

Pan American Petroleum Corporation, P. O. Box 1654, Oklahoma City 1, Oklahoma

* * * * * * *

[fol. 657a] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 658]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 722, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

PAN AMERICAN PETROLEUM CORPORATION,
a corporation, Defendant.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT—Filed June 8, 1959

Defendant hereby moves for summary judgment on plaintiff's claim.

The grounds for this Motion for Summary Judgment are that:

1. During the period from January 1, 1954, to July 16, 1954, the only lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was either (a) fixed by an order of the State of Kansas, or (b) if the Kansas order was inapplicable during such period of time, then the only lawful price for such sales was prescribed by the Natural Gas Act (15 U.S.C.A. §§717(a) et seq.), and plaintiff does not base its claim upon either that Order or that Act; and,

2. During the period after July 16, 1954, the only lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was fixed by a rate filed with and accepted by the Federal Power Commission, under its regulations prescribed under the Natural Gas Act, 15 [fol. 659] U.S.C.A. §§717(a) et seq., and plaintiff does not base its claim upon that filed rate.

This Motion for Summary Judgment is based upon the facts established by the pleadings and by plaintiff's answers to defendant's interrogatories and plaintiff's responses to

defendant's request for admissions to be filed in support hereof, and such other affidavits as are filed herein pursuant to the schedule fixed by the order entered herein on May 8, 1959.

Morris, Nichols, Arsht & Tunnell, James M. Tunnell, Jr., 3000 duPont Building, Wilmington, Delaware, Attorneys for Defendant.

June 8, 1959.

* * * * * * * *

[fol. 660] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 661]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 722, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

PAN AMERICAN PETROLEUM CORPORATION, a corporation, Defendant.

CERTIFIED COPIES OF OFFICIAL PAPERS—Filed June 22, 1959

In the manner provided by 10 Del. C., §4308, and by Rule 44 of the Rules of this Court, the defendant hereby introduces into the record of this cause the certified copies of papers attached hereto as Exhibits A through O hereof.

Morris, Nichols, Arsht & Tunnell, James M. Tunnell, Jr., 3000 duPont Building, Wilmington, Delaware, Attorneys for Defendant.

* * * * * * * *

[fol. 662] EXHIBIT F

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

CERTIFICATION

I hereby certify that the attached eleven pages are true copies of a letter from Cities Service Gas Company dated February 5, 1957 to Federal Power Commission in the matter of Magnolia Petroleum Company, Proposed Rate Schedule No. 3 on file with this Commission.

This 19th day of Sept., 1958.

/s/ CHARLES C. BENNINGTON
NAME
TITLE Records Officer

I hereby certify that

NAME Charles C. Bennington

TITLE Records Officer

whose signature appears above, is official custodian of the records of the Federal Power Commission to which certification is made and was such official custodian at the time of executing the above certification.

/s/ J. H. GUTRIDE
Secretary

[Seal]

[fol. 663]

CITIES SERVICE GAS COMPANY
First National Building
Oklahoma City 1, Oklahoma

February 5, 1957

Federal Power Commission
Washington 25, D. C.

Attention: Joseph H. Gutride, Secretary
100-2 Gas Cor.

In Re: Magnolia Petroleum Company
Proposed Rate Schedule No. 3

Gentlemen:

Cities Service Gas Company, hereinafter called Protestant, objects to the acceptance by this Commission of Magnolia Petroleum Company's proposed F.P.C. Rate Schedule No. 3, and in support thereof submits the following:

1. The basic contract dated June 17, 1946, included as part of the aforesaid proposed rate filing, covers the sale of gas to Cities Service by Magnolia which the latter produces within the Kansas-Hugoton Gas Field. Such contract specifies a price of 6¢ Mcf (16.4#) for the first fifteen (15) years after the first delivery of gas thereunder, and such price of 6¢ Mcf is now the effective price payable by the terms of said contract. As indicated by Supplement No. 26 of the proposed rate filing, the Kansas Corporation Commission issued an Order, effective January 1, 1954, which provided in substance for the attribution of a minimum wellhead price of not less than 11¢ Mcf (14.65#) for all gas taken from the Kansas-Hugoton Gas Field. Within the time provided by statute and in accordance with the provisions of the statute, Cities Service filed its Petition for Judicial Review of the said Order, in the District Court of Finney County, Kansas, which said Court on May 14, 1956 upheld and sustained the aforesaid Order of the Kansas Commission. Thereafter Cities Service appealed the judgment of the District Court to the Supreme Court

[fol. 664] of Kansas, which said Court on December 8, 1956 rendered its decision sustaining the judgment of the District Court of Finney County, Kansas. On January 18, 1957 Cities Service filed and served its Notice of Appeal From the Decision of the Kansas State Supreme Court to the United States Supreme Court. The record of the proceedings before the State Supreme Court is now in process of being designated and compiled, and within the time prescribed by law Cities Service will file such record and otherwise perfect its appeal in order that the said appeal may be duly docketed in the United States Supreme Court.

2. Under date of January 21, 1954 Cities Service, by letter, advised Magnolia Petroleum Company that pending final judicial determination of the validity of the aforesaid gas price fixing order and beginning January 1, 1954 it intended to pay for all gas purchased by it in the Kansas-Hugoton Field in strict compliance with the terms and conditions of said Order. Further that such compliance with said Order by Cities Service was made to avoid the penalties and actions provided by the Kansas Statutes for violation thereof, and that such payment made to Magnolia in compliance with said Order, pending a final judicial determination of the validity thereof, were to be considered and accepted by Magnolia as involuntary payments by Cities Service, without prejudice to its rights in said litigation and in no event as an acquiescence by it in the validity of said Order. Said letter further specifically provided that in event said Order is finally judicially modified or declared to be invalid, in whole or in part, as a result of which Cities Service has overpaid Magnolia for gas purchased from it during the period since the issuance and effective date of said Order, Cities Service would expect Magnolia to re-[fol. 665] fund to it any overpayments made by plaintiff during such interim. A true and correct copy of such letter is hereto attached. As is evidenced by such letter and the endorsements on checks for gas payments, as hereinafter set out, Protestant at no time has agreed that the Kansas Minimum Price Order is valid.

3. Since January 1, 1954, the effective date of said Kansas Gas Price Fixing Order, and up to and including July 22, 1955, Cities Service paid to Magnolia, upon the terms and conditions set out in the letter above referred to, for all gas purchased, delivered and received under the contract aforesaid the price of 11¢ Mcf (14.65#) and on each check issued by Cities Service to Magnolia during such period for the payment of such purchased gas or on the stub or voucher attached and a part thereof the following endorsement was made and appears, namely: "In full settlement of gas purchased for the period ending (date monthly period ended stated), subject to the provisions of letters dated August 25, 1953 and January 21, 1954, with reference to gas purchased in Kansas."[1] During the period aforesaid Magnolia accepted and cashed each of the checks issued by Protestant for the payment of gas carrying such endorsements, and the same were paid upon presentation. The acceptance of such payments, under the conditions hereinabove outlined, constitutes a valid and subsisting agreement by Magnolia to make the refunds in accordance with Protestant's letter to Magnolia dated January 21, 1954 (Exhibit A) (*Edwards* v. *Gildenmeister*, 61 Kan. 141, 59 Pac. 259; *Brownson* v. *Perry*, et al, 71 Kan. 578, 81 Pac. [fol. 666] 197; *Belden Mfg. Co.* v. *Curtis-Wright Airplane Co.*, 137 Kan. 840, 22 Pac. 2d 494; *Baker* v. *Jones*, 141 Kan. 240, 40 P. 2d 346; *Fey* v. *Loose-Wiles Biscuit Co.*, 147 Kan. 31, 75 P. 2d 810; and *Caterpillar Tractor Co.* v. *Sickler*, 149 Kan. 457, 87 P. 2d 503). Magnolia has failed to include in its proposed rate schedule filing a copy of Protestant's letter of January 21, 1954, aforesaid, and to set out the conditions under which each payment check was delivered, even though the same constitute a valid and subsisting agreement between Magnolia and Protestant which is a supplement or amendment to the base contract that has been tendered for filing.

4. On November 30, 1955 Protestant filed an action against Magnolia Petroleum Company in the United States

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[1] The letter of August 25, 1953, referred to in the above endorsement, is immaterial to any issue in this proceeding.

District Court for the District of Kansas in the nature of a declaratory judgment action to determine the application and validity of the Kansas Minimum Price Order aforesaid, and further praying for judgment against Magnolia for the amount of all overpayments for gas which Protestant had theretofore made. At the time of the filing of such action, by Order of the Court, Protestant paid into the aforesaid Court the amount of money representing payments for gas delivered from July 23, 1955 to the date of the filing of such action, at 11¢ Mcf (the amount fixed by the Kansas Minimum Price Order) and since the filing of such action Protestant has been paying into Court monthly payments at the rate of 11¢ Mcf. By stipulation of the parties to such litigation the Clerk of the aforesaid Court has paid and is paying to Magnolia currently an amount representing the contract price of 6¢ Mcf (16.4#) and the balance of the moneys being paid by Protestant to such Court are being impounded in the Registry of the said Court pending final judgment in such action. The said [fol. 667] Court has entered an order staying this action until the further order of the Court, and to date the Court has made no further order. All payments to the Clerk of the United States District Court above mentioned have been made by voucher checks which have contained the following:

> "In full payment for gas purchased by Cities Service Gas Company from Magnolia Petroleum Company under subsisting gas purchase contract dated June 17, 1946, covering period from (here is inserted monthly period covered), both inclusive, computed at a price of 11¢ and on a pressure base of 14.65# p.s.i.a. as authorized by Court Order dated November 30, 1955, in case of Cities Service Gas Company v. Magnolia Petroleum Company, District Court of the United States, District of Kansas, Civil Action No. W-1995."

5. In its proposed rate schedule filing Magnolia has tendered an Interim Order dated February 18, 1949 (Supplement No. 18), and an Order and Memorandum Opinion dated December 2, 1953, by the State Corporation

Commission of Kansas (Supplement No. 26) and thereby seeks to establish a price of 11¢ Mcf (14.65 psia.) as its effective rate covering the sale of gas to Protestant under the basic contract between Magnolia and Protestant. Protestant respectfully submits that the aforesaid price orders and each of them are wholly void, abinitio, are of no legal force and effect, and do not constitute any part of Protestant's contract with Magnolia and cannot operate to change or amend the price of gas as contained in the aforesaid basic contract. In the recent cases of *Natural Gas Pipeline Company of America* v. *Panoma Corporation, et al,* and *Natural Gas Pipeline Company of America* v. *Corporation Commission of State of Oklahoma, et al,* 349 U.S. 44, 99 L. Ed. 866, the United States Supreme Court passed upon the validity of a state minimum gas price fixing order issued by the Oklahoma Corporation Commission, which said order is similar, if not identical, to the orders of the Kansas Corporation Commission which Magnolia has tendered for filing as a part of its proposed rate [fol. 668] schedule. In such cases, construing the Natural Gas Act, the Court said:

> "In these cases Oklahoma has attempted to fix a minimum price to be paid for natural gas, after its production and gathering had ended, by a company which transports the gas for resale in interstate commerce. We held in *Phillips Petroleum Company* v. *Wisconsin,* 347 U.S. 672, 98 L. Ed. 1035, that such a sale and transportation cannot be regulated by a state but are subject to the exclusive regulation of the Federal Power Commission. The Phillips case, therefore, controls this one.
>
> "We disagree with the contention of Appellees that *Cities Service Gas Company* v. *Peerless Oil and Gas Company,* 340 U.S. 179, 95 L. Ed. 190, and *Phillips Petroleum Co.* v. *Oklahoma,* 340 U. S. 190, 95 L. Ed. 204, are applicable here. In those cases we were dealing with Constitutional questions and not the construction of the Natural Gas Act. The latter question was specifically not passed upon in those cases. Reversed."

Protestant is informed that the sales of gas in the above cited cases were sales made after production and gathering had been concluded and after producers had processed such gas, same being sold as residue gas. The sales of gas by Magnolia to Protestant here involved are identical to those in the cases above cited in that such gas is sold and delivered by Magnolia to Protestant after the same has been produced, gathered and processed by Magnolia Petroleum Company.

6. The similarity of the Kansas Minimum Gas Price-fixing Orders above referred to and the Oklahoma Minimum Gas Price-fixing Orders involved in *Natural Gas Pipeline Company of America* v. *Panoma Corporation* and *Natural Gas Pipeline Company of America* v. *Oklahoma Corporation Commission*, supra, can best be illustrated by quoting the material and essential provisions of each of such orders. The Kansas Commission Order of December 2, 1953, which [fol. 669] Magnolia has tendered for filing, reads in part:

> "That all persons, firms or corporations which take gas or cause gas to be taken from the Hugoton Gas Field in Kansas on or after January 1, 1954, 12:01 A.M., shall, as a condition precedent for withdrawal from the common source of supply, pay or attribute to all gas taken, except gas for the operations of leases, for all purposes including payments to producers, landowners, leaseowners and royalty owners, the fair and reasonable minimum price of not less than eleven cents (11¢) per Mcf. (14.65# psia.) at the wellhead until further order or orders of this Commission."

The most recent minimum gas price fixing order of the Oklahoma Corporation Commission and which was construed in the cases last hereinabove cited, reads in part as follows:

> "That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less

than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic feet plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet."

7. In its attempt to comply with the provisions of Order 174-B of this Commission, Magnolia Petroleum Company has tendered for filing two copies of a billing statement for the month of June, 1954, which purports to show how the billing amount had been determined on and since June 7, 1954. Protestant specifically objects to the acceptance of such billing statement for the reason that the same wholly failed to show the conditions under which payment was made for the period covered by such billing statement, namely, Protestant's letter to Magnolia dated January 21, 1954 and the endorsements upon the checks accepted by [fol. 670] Magnolia. Such billing statement further contained thereon the statement, "subject to pending claims for additional amounts due seller for gathering." This statement was not contained upon the billing statement issued by Protestant to Magnolia but appears to have been added thereon after the same was received by Magnolia.

8. Protestant respectfully submits that the proposed Rate Schedule tendered for filing by Magnolia (F.P.C. No. 3) should be rejected in its entirety because it does not comply with Commission's Order 174-B, which Order specifically requires the filing of the basic contract covering the sale of natural gas and *all* supplements or agreements amendatory thereof effective and applicable on and after June 7, 1954. Magnolia wholly has failed to file Protestant's letter dated January 21, 1954 (Exhibit A) which, when construed in the light of endorsements on all checks in payment for gas since said date, constitutes an agreement binding upon Magnolia which is amendatory of the said contract

effective on and after June 7, 1954, within the purview of Commission's Order 174-B. If this Commission does not reject the proposed rate filing in its entirety, then Protestant respectfully submits that the following parts of such filing should be rejected, namely, the Interim Order dated February 18, 1949 of the State Corporation Commission of Kansas (proposed Supplement No. 18), the Commission's Order and Memorandum Opinion dated December 2, 1953 by the State Corporation Commission of Kansas (proposed Supplement No. 26), and the two copies of the billing statement for the month of June, 1954, for all of the reasons heretofore urged.

9. Protestant further respectfully submits that, as shown by the above and foregoing statement of facts, the legal rate or price for gas under the basic contract which has [fol. 671] been tendered for filing, at June 7, 1954, and at all times thereafter and now, is 6¢ Mcf. on a 16.4# pressur base, and therefore this Protestant specifically objects to the acceptance, for filing, of any rate schedule in excess of the contract or legal price of 6¢ Mcf. on the basis of measurement set out in said contract.

10. Protestant further respectfully submits that, in the event this Commission does not reject the proposed filing in its entirety, this Commission should reject the portions of such filing described in the paragraph above or that this Commission should defer all action with reference to the acceptance of the proposed Rate Schedule, or any part thereof, until the litigation now pending concerning the validity of the Kansas Commission's Order of December 2, 1953 has been judicially determined, for the reason that it is not within the province of this Commission to determine the legal issues that are now presented in such litigation and that until such litigation has been concluded this Commission cannot determine the effective price at June 7, 1954 and now, and therefore cannot determine the legal rate for the purpose of the proposed filing (see *J. Edward Jones* v. *Securities and Exchange Commission.*, 298 U.S. 1, 80 L. Ed. 1015).

11. Protestant further submits that when and if this Commission shall accept for filing the presently proposed,

or any rate schedule which Magnolia may tender in substitution therefor, that the same may not be made effective retroactively but pursuant to the provisions of Section 154.22 of the Commission's Rules and Regulations may become effective not less than thirty days from the filing thereof. Protestant therefore respectfully requests that [fol. 672] when and if this Commission shall accept the rate schedule which Magnolia has tendered for filing with such exclusions and additions thereto as the Commission may direct to be made that the same be accepted and made effective not less than thirty days from the filing thereof.

12. A copy of this letter has been served upon Magnolia Petroleum Company by mail addressed to each of the following:

R. D. Hanley, Vice President
Magnolia Petroleum Company
P. O. Box 900
Dallas 21, Texas

W. S. Richardson, Attorney
Magnolia Petroleum Company
P. O. Box 900
Dallas 21, Texas.

Very truly yours,

CITIES SERVICE GAS COMPANY

By /s/ G. C. ROTH
Vice President

[fol. 673]

EXHIBIT A

Cities Service Gas Company
First National Building
Oklahoma City 1, Oklahoma

January 21, 1954

Magnolia Petroleum Company
P. O. Box 900
Dallas, Texas

Gentlemen:

The State Corporation Commission of the State of Kansas by Order dated December 2, 1953, in Docket No. 44079-C (C-3216) directed that on and after January 1, 1954, as a condition precedent for withdrawal of gas from the Hugoton Gas Field in Kansas, there shall be paid therefor or attributed thereto, at the wellhead, a minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.).

Cities Service Gas Company and certain other parties filed Petitions in the District Court of Finney County, Kansas, for a judicial review of the said Order.

Pending final judicial determination of the said Order and beginning January 1, 1954, Cities Service Gas Company intends to pay for all gas purchased by it in the Kansas Hugoton Field in strict compliance with the terms and conditions of the said Order. Such compliance with said Order of this Company, however, is made to avoid the penalties and actions provided by the Kansas statutes for a violation thereof, and the payments made to you in compliance with said Order pending its final judicial determination are to be considered and accepted by you as involuntary payments on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said Order.

In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during

the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments.

Very truly yours,

/s/ G. C. Roth
G. C. Roth
Vice President

GCR:hl

[fol. 674] EXHIBIT G

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

CERTIFICATION

I hereby certify that the attached eight pages are true copies of a letter from Cities Service Gas Company, dated February 26, 1957 to Federal Power Commission in the matter of Magnolia Petroleum Company on file with this Commission.

This 19th day of Sept., 1958.

/s/ CHARLES C. BENNINGTON
NAME
TITLE Records Officer

I hereby certify that

NAME Charles C. Bennington

TITLE Records Officer

whose signature appears above, is official custodian of the records of the Federal Power Commission to which certification is made and was such official custodian at the time of executing the above certification.

/s/ J. H. GUTRIDE
Secretary

[Seal]

[fol. 675]

Received
Feb 26 4 42 PM '57
Federal Power Commission

Official File Copy
To Init. Date
~~RGC~~ DM 3/27
Central Files

[Emblem]

CITIES SERVICE GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY 1, OKLAHOMA

February 26, 1957

Federal Power Commission
Washington 25, D.C.

Attention: J. H. Gutride, Secretary

Gentlemen:

100-2 Gas Cor.
Re: Magnolia Petroleum Company
Proposed Rate Schedule No. 3

Cities Service Gas Company (hereinafter called "Protestant") hereby respectfully protests the acceptance by this Commission of F.P.C. Rate Schedule No. 3 of Magnolia Petroleum Company (hereinafter called "Magnolia"), as supplemented and retendered by Magnolia under date of February 18, 1957. In support of this protest, Protestant respectfully submits the following:

(1) Protestant hereby renews and incorporates as a part hereof, by reference to the files of the Commission, its prior protest to the subject rate schedule dated February 5, 1957.

(2) The aforesaid proposed rate schedule contains, as Supplements Nos. 18 and 26, two minimum price orders

of the State Corporation Commission of Kansas and thereby seeks to establish a price of 11¢ per Mcf as its filed rate. Protestant respectfully submits that as applied to its operations, the aforesaid minimum price orders are wholly void *abinitio* and of no legal force and effect, and do not constitute an appropriate supplement to the base contract of April 24, 1953, and, therefore, cannot operate to change or amend the price for gas as contained in the aforesaid basic contract.

In the recent case of *Natural Gas Pipeline Company of America* v. *Panoma Corporation, et al.*, 349 U.S. 44, 99 L. Ed. 866, the United States Supreme Court held invalid certain minimum price orders issued by the Oklahoma Corporation Commission. Those orders are similar, if not identical, to the orders of the Kansas Corporation Commission which have been tendered for filing by Magnolia as a part of its proposed rate schedule. In the *Panoma* case, the Court said:

> "In these cases Oklahoma has attempted to fix a minimum price to be paid for natural gas, after its production and gathering had ended, by a company which [fol. 676] transports the gas for resale in interstate commerce. We held in *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672, 98 L. Ed. 1035, that such a sale and transportation cannot be regulated by a state but are subject to the exclusive regulation of the Federal Power Commission. The *Phillips* case, therefore, controls this one.
>
> "We disagree with the contention of Appellees that *Cities Service Gas Company* v. *Peerless Oil and Gas Company*, 340 U.S. 179, 95 L. Ed. 190, and *Phillips Petroleum* v. *Oklahoma*, 340 U.S. 190, 95 L. Ed. 204, are applicable here. In those cases we were dealing with Constitutional questions and not the construction of the Natural Gas Act. The latter question was specifically not passed upon in those cases. Reversed."

Protestant is informed that the sales of gas in the above cited cases were sales made after production and gathering had been concluded and after producers had processed

such gas, same being sold as residue gas. The sales of gas by Magnolia to Protestant here involved are identical to those in the cases above cited in that such gas is sold and delivered by Magnolia to Protestant after the same has been produced, gathered and processed by Magnolia Petroleum Company.

(3) The similarity of the Kansas minimum price orders and the Oklahoma minimum price orders can best be illustrated by quoting the material and essential provisions of the orders of the two States. The Kansas order (Supplement No. 26) reads, in pertinent part, as follows:

> "That all persons, firms or corporations which take gas or cause gas to be taken from the Hugoton Gas Field in Kansas on or after January 1, 1954, 12:01 A.M., shall, as a condition precedent for withdrawal from the common source of supply, pay or attribute to all gas taken, except gas for the operations of leases, for all purposes including payments to producers, landowners, leaseowners and royalty owners, the fair and reasonable minimum price of not less than eleven cents (11¢) per Mcf. (14.65# psia.) at the wellhead until further order or orders of this Commission."

The Oklahoma order which was construed in the *Panoma* case, *supra*, reads, in pertinent part, as follows:

> "That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet [fol. 677] if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic feet plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet."

Protestant has appealed the Kansas Minimum Price Order to the United States Supreme Court, as is hereinafter more fully set out. It is respectfully submitted that in view of the *Panoma* decision, the Kansas Minimum Price Order will in all probability also be declared invalid.

(4) Continuously since the issuance of the Kansas minimum price order of December 2, 1953 (Supplement No. 26), Protestant has contested the validity of said order not only by notice to Magnolia, as evidenced by the aforementioned letter of January 21, 1954, but has sought judicial review of said order in the District Court of Finney County, Kansas, and by appeal to the Kansas State Supreme Court. On January 18, 1957, Protestant, having received an adverse decision by the Kansas State Supreme Court, filed and served its notice of appeal to the United States Supreme Court. Protestant has now perfected the said appeal and anticipates an early decision thereon.

(5) Magnolia has now tendered for filing as a part of its proposed rate schedule a copy of the letter from Protestant to Magnolia dated January 21, 1954, prescribing the conditions under which Protestant would make payments for gas. In its tender of the copy of such letter, Magnolia specifically denies that the said letter constituted any agreement on its part to refund moneys to Protestant, and makes the express reservation and denial that the said letter constituted any part of Magnolia's initial rate schedule. At no time, however, after receipt of the said letter, did Magnolia reply thereto and indicate that it was not accepting payments for gas under the conditions prescribed in said letter. On the contrary, it accepted coupon checks each month in payment for gas which contained the specific condition that payment was being made "In full settlement of gas purchased for the period ending (date monthly period ended stated), subject to the provisions of letters dated August 25, 1953 and January 21, 1954, with reference to gas purchased in Kansas."

[fol. 678] Under the applicable law, it is apparent that the acceptance by Magnolia of such checks under the conditions above outlined and the appropriation of the proceeds thereof, without qualification, constitutes an acceptance of the aforementioned terms upon which Protestant made pay-

ments. Such action constituted an agreement by Magnolia to make repayment in accordance with the terms of the letter of January 21, 1954. As is stated in *Autographic Register Co.* v. *Phillips Hano Company, Inc.*, 198 F. 2d 208, 212:

> "Furthermore, silent acceptance of a check sent in payment of a disputed claim, even in the absence of a finding of mental assent, is now generally held by parity of reasoning to constitute an accord and satisfaction of the claim; (citing *Decker* v. *George W. Smith & Company*, 88 N.J.L. 630, 96 Atl. 915, wherein) it is said that 'the great and increasing weight of authority in the United States, as a matter of law regards the use and retention of the check by the creditor, with knowledge of the condition, as assent to it. It is said that the acceptance of the check necessarily involves an acceptance of the condition upon which it was tendered.'"

Numerous other cases could be cited in support of the above proposition of law, a few of which include *Burger* v. *The First National Bank of Anthony*, 124 Kan. 23, 257 P. 979; *Turner* v. *George Rushton Baking Co.*, 139 Kan. 425, 32 P. 2d 211; *Caterpillar Tractor Co.* v. *Sickler*, 149 Kan. 457, 87 P. 2d 503, *Baker* v. *Jones*, 141 Kan. 240, 40 P. 2d 346.

(6) Protestant respectfully submits that in order for Magnolia's rate filing to show all the terms and conditions "affecting or relating" to its proposed rate or charge as required by section 154.93 of the Commission's Rules, this Commission should require Magnolia to file, as a part of its proposed rate schedule, not only a copy of Protestant's letter of January 21, 1954, which it was alternatively directed to file, but also a specimen of the coupons attached to the checks received by it in payment for gas for the period January 1, 1954 to July 23, 1955, each of which coupons, as stated above, contained the statement that such payment was being made under the conditions of Protestant's letter of January 21, 1954. A specimen of such coupon check is attached hereto and made a part hereof.

(7) On November 30, 1955, Protestant filed an action against Magnolia Petroleum Company in the United States

District Court for the District of Kansas in the nature of a declaratory judgment action to determine the application and validity of the Kansas Minimum Price Order aforesaid, and further praying for judgment against Magnolia for the amount of all overpayments for gas which Protestant [fol. 679] had theretofore made. At the time of the filing of such action, by Order of the Court, Protestant paid into the aforesaid Court the amount of money representing payments for gas delivered from July 23, 1955 to the date of the filing of such action, at 41¢ per Mcf (the amount fixed by the Kansas Minimum Price Order), and since the filing of such action Protestant has been and is now paying into Court monthly payments at the rate of 11¢ per Mcf. By stipulation of the parties to such litigation, the Clerk of the aforesaid Court has paid and is paying to Magnolia an amount representing the contract price of 6¢ per Mcf (16.4=). The balance of the money being paid by Protestant to such Court is being impounded in the Registry of the Court pending final judgment in the case.

(8) In connection with this Protest, attention is invited to the action of this Commission in connection with the tender for filing on February 13, 1956, by Phillips Petroleum Company, as Supplement No. 21 to its F.P.C. Rate Schedule No. 5, of a copy of the Oklahoma Minimum Price Order dated July 29, 1952. This supplement was accepted by the Commission for filing by letter dated March 9, 1956. Thereafter, pursuant to a protest by Panhandle Eastern Pipe Line Company, the Commission, on April 25, 1956, rescinded its prior acceptance of the aforesaid supplement and rejected the same, citing as its reason therefor that the filing was unilateral in nature and as such had no standing as a rate change under Section 4(d) of the Natural Gas Act. In reply to a letter from Phillips dated July 11, 1956, the Commission, on August 10, 1956, advised Phillips that:

> "In reviewing this matter, question has arisen as to whether Phillips' filing on February 13, 1956 of the Oklahoma minimum price order as Supplement No. 21, was inconsistent with the agreement for conditional payments by Panhandle Eastern, previously accepted as Supplement No. 10. Said Supplement No. 10, com-

prising a letter agreement dated September 8, 1952, provides that Panhandle Eastern would pay Phillips the price stated in the minimum price order, conditioned, however, upon Phillips' agreement to repay the difference between the contract price and the higher price prescribed by the State minimum price order if the order was thereafter declared invalid. Phillips agreed to such conditional payment. The Oklahoma minimum price order was declared invalid by the U.S. Supreme Court in April 1955."

In the instant case Magnolia Petroleum Company likewise has, by its acceptance of payment upon the condition on which such payment was tendered by Cities Service Gas Company, agreed to repay the difference between the contract price and the higher price prescribed by the minimum price order, if such order was thereafter declared invalid. [fol. 680] We respectfully submit, therefore, that the action of the Commission as regards the Phillips filing is a clear precedent for rejecting that part of Magnolia's proposed filing containing the Kansas Minimum Price Order.

(9) Magnolia has included as a part of its proposed rate filing two copies of a billing statement for the month of June, 1954 which purport to show the payment of 11¢ per Mcf as prescribed by the latest Kansas Minimum Price Order. Protestant specifically objects to the acceptance of such billing statement for the reason that the same wholly fails to show the terms and conditions under which payment was made for the period covered by such billing statement, as required by section 154.93 of the Commission's Rules.

(10) Protestant further submits that the legal rate or price for gas sold under the basic contract has, since June 7, 1954, been, and is now, 6¢ per Mcf on a 16.4# pressure base. This Protestant, therefore, specifically objects to the acceptance for filing of any rate schedule in excess of the contract or legal price of 6¢ per Mcf on the basis of measurement as set out in said contract.

(11) Protestant respectfully submits that, in view of the foregoing the proposed rate schedule as now tendered for

filing by Magnolia (F.P.C. Rate Schedule No. 3) should again be rejected in its entirety. In the event this Commission does not reject the tendered filing in its entirety, then Protestant respectfully urges this Commission to accept only the base contract of April 24, 1953, and withhold action upon the acceptance or rejection of the remainder of the proposed rate filing until final determination of Protestant's appeal to the United States Supreme Court (*Cities Service Gas Company* v. *Kansas Corporation Commission*) and final determination of the proceedings in the United States District Court for the District of Kansas, Civil Action No. W-1995 (*Cities Service Gas Company* v. *Magnolia Petroleum Company*). Until those proceedings are concluded, this Commission cannot determine with finality the effective price payable under said contract and, therefore, cannot now determine the legal rate for the purpose of the proposed filing (*J. Edward Jones* v. *Securities and Exchange Commission*, 298 U.S. 1, 80 L. Ed. 1015) (See also *Phillips Petroleum Company* v. *Federal Power Commission*, 227 F. 2d 470). Protestant further respectfully submits that, if the proposed rate filing or any part thereof is accepted for filing, the same should become effective no sooner than thirty (30) days after the acceptance thereof.

(12) In the event the Commission does accept for filing the Kansas Minimum Price Orders, then Protestant urges that, in order to protect Protestant's rights, such acceptance be specifically conditioned on the express understanding that the acceptance of such orders is conditional and is without prejudice to the rights of Protestant in the aforementioned pending litigation against Magnolia, and is effective only if the Kansas Minimum Price Orders are found to be valid as applied to Protestant's operations in the pro- [fol. 681] ceedings now pending in the United States Supreme Court wherein Cities Service Gas Company is appellant and the State Corporation Commission is appellee, and not otherwise.

Respectfully submitted,

CITIES SERVICE GAS COMPANY

By /s/ O. R. STITES
O. R. Stites, Attorney

[fol. 682]

V. R. CITIES SERVICE GAS COMPANY 2-24-54 C. R.
OKLAHOMA CITY, OKLA.

	Net Amount
In full settlement of gas purchased for the period ending 1-22-54, subject to provisions of letters dated 8-25-53, and 1-21-54 with reference to gas purchased in Kansas.	192,605.34

VOUCHER NO. CHECK NO. 12581

CITIES SERVICE GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

Feb 25 1954

THE CHASE NATIONAL BANK OF THE
CITY OF NEW YORK
1-74 NEW YORK, N. Y.

Pay ONE HUNDRED NINETY TWO THOUSAND
SIX HUNDRED FIVE AND 34/100 $192,605.34

IN FULL SETTLEMENT OF ACCOUNT AS SHOWN IN
ACCOMPANYING VOUCHER

SPECIMEN

TO THE ORDER OF
MAGNOLIA PETROLEUM COMPANY
P. O. BOX 900
DALLAS, TEXAS

CITIES SERVICE GAS COMPANY
/s/ C. J. MARTIN
/s/ A. C. KLEINSCHMIDT

COUNTERSIGNATURE REQUIRED WHEN DRAWN FOR
MORE THAN $200.00

[fol. 683] EXHIBIT H

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

CERTIFICATION

I hereby certify that the attached two pages are true copies of an ORDER ACCEPTING RATE SCHEDULE FOR FILING issued March 21, 1957 in the matter of Magnolia Petroleum Company on file with this Commission.

This 19th day of Sept., 1958.

/s/ CHARLES C. BENNINGTON
NAME
TITLE Records Officer

I hereby certify that

NAME Charles C. Bennington
TITLE Records Officer

whose signature appears above, is official custodian of the records of the Federal Power Commission to which certification is made and was such official custodian at the time of executing the above certification.

/s/ J. H. GUTRIDE
Secretary

[Seal]

[fol. 684]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Seaborn L. Digby, Frederick Stueck, William R. Connole and Arthur Kline.

In the Matter of — 100-2 GAS COR.
Magnolia Petroleum Company

ORDER ACCEPTING RATE SCHEDULE FOR FILING

(Issued March 21, 1957)

Magnolia Petroleum Company (Magnolia) on February 19, 1957, retendered for filing as a rate schedule effective on June 7, 1954, for sales of natural gas to the Cities Service Gas Company (Cities Service), its basic contract dated June 17, 1946, together with various supplements or amendments thereto, which have been respectively designated as Magnolia's FPC Gas Rate Schedule No. 3, and Supplements Nos. 1 through 27 thereto. Magnolia proposes an effective date of January 14, 1957, for the retendered filing.

The Commission previously rejected a tendered filing of Magnolia for this sale as incomplete in that Magnolia did not submit a letter of January 21, 1954, from Cities Service conditioning the payments at the rate of 11¢ per Mcf upon the validity of the Kansas Corporation Commission Minimum Price Order and with expectation of a refund from Magnolia if the order was invalid.[1] Magnolia has now included such letter of conditional payment. The retendered filing also includes three Kansas State Corporation Commission Orders setting a minimum price of 11¢ per Mcf at 14.65 psia for gas sold from the Hugoton Field.

Cities Service objects to the filing on the grounds that the Kansas Minimum Price Order is similar to the Okla-

[1] Cities Service is contesting the validity of the Kansas order in the courts.

homa Minimum Price Order heretofore found by the courts to be invalid; that Magnolia should file a copy of the monthly payment check received from Cities Service showing the conditions under which the payment is made; and that Magnolia should not make any reservations in filing, inasmuch as acceptance of the check shows acceptance of the conditions of payment. Cities Service requests that any acceptance of the filing be conditioned as being without prejudice to the rights of Cities Service in pending litigation and the rate is effective only if the Kansas Minimum Price Orders are found to be valid.

[fol. 685] *The Commission finds*:

Good cause has been shown that Magnolia's FPC Gas Rate Schedule No. 3, and Supplements Nos. 1 through 27 thereto, be accepted for filing; subject, however, to the express condition that such acceptance is without prejudice to any claims or contentions which have been made by or for Magnolia Petroleum Company or by or for Cities Service Company in pending litigation concerning this particular sale of gas.

The Commission orders:

(A) Magnolia's FPC Gas Rate Schedule No. 3, and Supplements Nos. 1 through 27 thereto are accepted for filing; subject, however, to the express condition that such acceptance is without prejudice to any claims or contentions which have been made by or for Magnolia Petroleum Company or by or for Cities Service Company in pending litigation concerning this particular sale of gas.

(B) Nothing contained in this order shall be construed as a waiver of the requirements of Section 7 of the Natural Gas Act; nor shall it be construed as constituting approval by the Commission of any service, rate, charge, classification, or any rule, regulation, or practice affecting such service or rate provided for in the above-described rate schedule, nor shall this order be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate.

(C) This order is without prejudice to any findings or order which has been or may hereafter be made by this Commission in any proceeding now pending, or hereafter instituted by or against Magnolia Petroleum Company.

By the Commission.

J. H. GUTRIDE

Joseph H. Gutride,
Secretary.

[fol. 686] EXHIBIT I

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

CERTIFICATION

I hereby certify that the attached fifteen pages are true copies of a letter dated April 17, 1957 in the matter of Magnolia Petroleum Company's Rate Schedule No. 3 and Supplements thereto, transmitting the "Application of Cities Service Gas Company for Rehearing" in the matter of Magnolia Petroleum Company on file with this Commission.

This 19th day of Sept., 1958.

/s/ CHARLES C. BENNINGTON
NAME
TITLE Records Officer

I hereby certify that

NAME Charles C. Bennington
TITLE Records Officer

whose signature appears above, is official custodian of the records of the Federal Power Commission to which certification is made and was such official custodian at the time of executing the above certification.

/s/ J. H. GUTRIDE
Secretary

[Seal]

[fol. 687]

Received
Apr 18 2 51 PM '57
Federal Power Commission

[emblem]

CITIES SERVICE GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY 1, OKLAHOMA

CONRAD C. MOUNT
VICE PRESIDENT AND GENERAL COUNSEL

April 17, 1957

Federal Power Commission
Washington, D. C.

100-2 GAS COR

Attention: Joseph H. Gutride, Secretary
Re: Magnolia Petroleum Company's Rate Schedule No. 3 and Supplements thereto.

Dear Sirs:

Transmitted herewith are twenty copies of Cities Service Gas Company's Petition for Rehearing in the above entitled matter.

Magnolia Petroleum Company has been served with a copy of this petition by mailing the same on April 17, 1957 to Magnolia Petroleum Company, P. O. Box 900, Dallas 21, Texas, attention of Ross Madole, as is shown by the Certificate of Service set out in the copy of the petition marked "Certificate of Service Included."

Very truly yours

/s/ CONRAD C. MOUNT

CCM:M
Encls.

[Stamp]
Official File Copy
To Init. Date
Docket GB 5-15
Central Files

[fol. 688]

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Received
Apr 18 2 52 PM '57
Federal Power Commission

In the Matter of
Magnolia Petroleum Company

100-2 GAS COR.

APPLICATION OF CITIES SERVICE GAS COMPANY FOR REHEARING

Cities Service Gas Company (hereinafter referred to as "Gas Company") respectfully petitions the Commission, pursuant to Section 1.34 of the Commission's Rules and Section 19(b) of the Natural Gas Act, for rehearing of its order of March 21, 1957, accepting for filing Magnolia Petroleum Company's (Magnolia) FPC Gas Rate Schedule No. 3 and Supplements Nos. 1 through 27 thereto. For the convenience of the Commission, a copy of the order of March 21, 1957 is attached hereto as Attachment "A". Gas Company respectfully sets forth the following grounds upon which this Application is based:

I

The factual situation surrounding the subject rate filing and the grounds upon which Gas Company protested the acceptance for filing of Magnolia's tendered Rate Schedule No. 3 and Supplements thereto are set forth in Gas Company's letters of protest to the Commission dated February 5 and February 26, 1957. To avoid repetition, those letters are incorporated herein by reference to the files of the Commission and made a part hereof and all of the grounds of protest set out in said letters are hereby renewed.

[fol. 689] II

Gas Company respectfully submits that a rehearing of the order of March 21, 1957, referred to above, is necessary. Gas Company construes the order as meaning that the Commission has not, by the acceptance for filing of the subject rate schedule, determined that the legally effective rate for the sale of gas by Magnolia to Gas Company is, or at any time was, 11¢ per Mcf. Thus, paragraph (A) of the order of March 21, 1957, provides as follows:

> "(A) Magnolia's FPC Gas Rate Schedule No. 3, and Supplements Nos. 1 through 27 thereto are accepted for filing; *subject, however, to the express condition that such acceptance is without prejudice* to any claims or contentions which have been made by or for Magnolia Petroleum Company or by or for Cities Service Company in pending litigation concerning this particular sale of gas."

Magnolia, on the other hand, has apparently construed the order as meaning that the Commission has determined the legally effective rate as being 11¢ per Mcf prospectively, as well as retroactively to June 7, 1954 and has requested that the Commission place that construction upon its order of March 21, 1957. (See Magnolia's letter to the Commission dated April 11, 1957 requesting construction of order)

III

Gas Company construes the order of March 21, 1957, as meaning that if the outcome of the litigation referred to in the aforementioned letters of protest is favorable to Gas Company, then the legally effective rate from June 7, 1954 is the contract price of 6¢ per Mcf; and that if the outcome of the litigation is unfavorable to Gas Company, then the legally effective rate from June 7, 1954 is the 11¢ price provided for by the Kansas Minimum Price Order. [fol. 690] We fail so see how a contrary construction can be placed upon the Commission's Order in view of the language in Paragraph (A) accepting for filing Magnolia's schedule *"subject, however, to the express condition that*

such acceptance is without prejudice to any claims or contentions which have been made by or for Magnolia Petroleum Company or by or for Cities Service Company in pending litigation concerning this particular sale of gas." (Emphasis supplied). Indeed, a contrary construction would render the above-quoted condition meaningless and might, as a practical matter, seriously prejudice the pending litigation in the United States Supreme Court and in the United States District Court for Kansas where the difference between the contract price and the ordered price is being impounded—something which the Commission in its March 21 order specifically stated it had no intention of doing.

On the other hand, if, as Magnolia contends, the Commission has accepted the 11¢ price as the legally effective rate from June 7, 1954 onward, then reconsideration of, and rehearing on, such acceptance is hereby requested. Such acceptance, we submit, would deprive Gas Company of property without due process of law, would be a clear and unwarranted interference with the contract between Gas Company and Magnolia, would constitute retroactive rate fixing, and would be contrary to Section 4 of the Natural Gas Act, as interpreted by the Supreme Court in the *United Gas Pipeline* case (350 U.S. 332) (1956)). Such acceptance would, as pointed out above, render meaningless the condition, quoted above, contained in Paragraph (A) of the order of March 21, 1957, and would also be contrary to the Commission's Order No. 174-B.

In this connection, attention is respectfully invited to the case of *Phillips Petroleum Company* v. *Federal Power Commission*, 227 F. 2d 470 (10th Cir. 1955), wherein the Court held that the Phillips rate in effect as of June 7, 1954 could not be determined until *after* the completion [fol. 691] of a rate proceeding before the Federal Power Commission involving the rates of Michigan-Wisconsin Pipe Line Company, to which rates the Phillips rate was tied by contract. The Court also held that the rate actually paid on June 7, 1954 was not the legally effective rate on that date inasmuch as the rate was being paid contingent upon the outcome of Michigan-Wisconsin's rate proceeding.

Here, as in the *Phillips* case, the rate being paid on June 7, 1954, was being paid *contingently and pursuant to an agreement to refund excess payments in the event the Kansas minimum price order is held invalid.* Here, as in the *Phillips* case, the determination of the effective rate cannot be made (except in the alternative) until the contingency on which such payments were and are being made has been resolved by the courts.

Stated another way, the 11¢ price contained in Magnolia's filing was not, and is not, the price which Gas Company agreed to pay to Magnolia. It was and is the price if, *and only if*, the validity of the Kansas Minimum Price Order is upheld by the Supreme Court of the United States.

To accept as the effective rate the conditional rate of 11¢ would, we submit, be clearly contrary to the holding in the *Phillips* case, *supra*. The *Phillips* case recognizes that a rate can be "determinable" and that what was actually paid on June 7, 1954 does not necessarily reflect the "effective" rate. In the instant case, the June 7, 1954 rate is a "determinable" rate. The 11¢ rate here involved was no more the effective rate on June 7, 1954, than was the rate collected by Phillips on June 7, 1954 for sales made to Michigan-Wisconsin.

Moreover, acceptance of the 11¢ price as the legally effective price beginning with June 7, 1954, would clearly contravene Section 154.93 of the Commission's own Rules and Regulations. That section defines the "rate schedule" [fol. 692] to be filed by an independent producer, such as Magnolia, as "the basic contract and all supplements or agreements amendatory thereof, effective and applicable on June 7, 1954, showing the * * * rates and charges, terms, conditions, * * * affecting such rates or charges, applicable to the * * * sale of natural gas in interstate commerce for resale * * *." As recognized in the aforementioned order of March 21, 1957, payment to Magnolia of the 11¢ price was *conditioned* "upon the validity of the Kansas Corporation Commission Minimum Price Order and with expectation of a refund from Magnolia if the order was invalid." Such condition, contained in the letter from Gas Company to Magnolia dated January 21, 1954 and required

by the Commission to be made a part of Magnolia's filing herein, is as much a part of Magnolia's filing as the basic contract itself. To disregard that letter, which sets forth the condition upon which payment of the 11¢ price was, and is, being made, is to disregard an essential part of the filing and the agreed upon basis for the payment of the 11¢ price.

Acceptance of the 11¢ price as the legally effective price as of June 7, 1954, would also contravene Section 154.92(a) of the Commission's Rules. That Section requires independent producers to file with the Commission rate schedules "setting forth the terms and conditions of service and all rates and charges for such transportation or sale *effective* on June 7, 1954" (Emphasis supplied). Obviously, the 11¢ price could not be the *effective* rate on June 7, 1954, inasmuch as Gas Company was litigating the validity of the 11¢ price and the 11¢ price was being paid and accepted subject to an agreement to refund. In *Jones* v. *S.E.C.*, 298 U.S. 1, the Supreme Court construed the word "effec-[fol. 693] tive" (as applied to a Registration Statement concerning which the S.E.C. had issued an order to show cause why a stop order should not issue suspending the Statement) as follows (at p. 18):

> "The word 'effective' as herein employed, connotes completeness of operative force and freedom to act. *And a Registration Statement which, while still in fieri, is brought under official challenge in respect of its validity and subjected to an official proceeding aimed at its destruction, cannot be so characterized until the challenge is determined in favor of the Registrant.* In the meantime, since he can act only at his peril, *the Registration Statement can in no real sense be called effective.*" (Emphasis supplied).

Under the factual situation here presented the 11¢ price cannot be said to be *effective* on June 7, 1954. In its letter dated April 11, 1954 requesting the Commission to construe its order of March 21, 1957, Magnolia states that, "It is the contention of Magnolia that *upon the filing* of such rate schedule its effective rate on and after June 7,

1954 was 11¢ per Mcf at 14.65 pressure base." (Second paragraph, P. 2—Emphasis supplied) Apparently Magnolia is of the view that quite apart from the effectiveness of the 11¢ price on June 7, 1954, the action of the Commission in accepting the 11¢ order for filing on March 21, 1957 rendered that price the *legal rate retroactive to June 7, 1954.* It is Gas Company's view that any legal consequences resulting from the action of the Commission by its acceptance of a rate filing cannot be retroactive. The Commission is requested to clarify this issue by specifying that the effective date of Magnolia's rate schedule shall be March 21, 1957.

Magnolia insists that the ruling of the Commission in the Dorchester case (Docket No. G-6505) should be applied to the facts in this case but there is an all-important difference in the facts in the two cases which makes the Dorchester ruling wholly inapplicable to the facts here involved. Here, Magnolia has by accepting checks in pay-[fol. 694] ment on the terms and conditions specified in Gas Company's letter of January 21, 1954, agreed to reimburse Gas Company for overpayments in the event the minimum price order is held invalid and that agreement forms an essential part of the terms and conditions under which Magnolia was selling to Gas Company on June 7, 1954 and is a part of Magnolia's rate filing. In the Dorchester case there was no *agreement* to refund excess payments but only a letter by the purchaser to seller setting out that the payment of the minimum price was being made under business compulsion subject to recovery on the theory of unjust enrichment. On June 7, 1954 Dorchester only had a lawsuit where Gas Company had an agreement to refund in the event the minimum price was held invalid. (See Pipeline Company of America's letter to Ponoma dated August 26, 1952 as set forth in the Court's opinion in the case of *Natural Gas Pipeline Company of America* v. *Harrington,* et al., 139 Fed. Supp. 452). In other words, Magnolia's agreement to reimburse Gas Company is inconsistent with an unconditional acceptance of the minimum price and brings the present case within the ruling of this Commission in connection with Phillips Petroleum Company's filing of Supplement No. 21 to its F.P.C. Rate

Schedule No. 5 wherein the Oklahoma Minimum Price was rejected in view of Phillips' agreement to refund in the event the Oklahoma Minimum Price was held invalid.

IV

So that both Gas Company and Magnolia may be fully advised regarding the scope and effect of the order of March 21, 1957, it is respectfully requested that the Commission reconsider its order and enter appropriate findings and conclusions to the effect, that, if the Kansas Minimum Price Order is declared invalid by the United States Su- [fol. 695] preme Court, then the legally effective price from and after June 7, 1954 will automatically be the contract price of 6¢ per Mcf; and that if the validity of the Kansas Minimum Price Order is upheld by the United States Supreme Court, then the legally effective price from and after June 7, 1954, will automatically be 11¢ per Mcf.

V

If the order of March 21, 1957 is not supplemented by appropriate findings construing the order as requested in paragraph IV above, then reconsideration and rehearing of the order of March 21, 1957 is respectfully requested on the following grounds:

1. The Commission erred in accepting the price of 11¢ as the legally effective price as of June 7, 1954, inasmuch as that price was not in fact the "effective" price on that date, but the validity thereof was then being litigated by Gas Company and was being paid by Gas Company and received by Magnolia pursuant to an agreement to refund the excess over the contract price, if the Kansas Minimum Price Order was declared invalid. The validity of the Kansas order is now pending decision in the United States Supreme Court in Case No. 797, October 1956 term. Acceptance of the 11¢ price as an "effective" price deprives Gas Company of its contractual rights and constitutes a taking of property without due process of law.

2. The Commission erred in accepting the Kansas Minimum price of 11¢ as the legally effective price, without affording Gas Company a hearing, in violation of the Administrative Procedure Act and the due process clause of the Constitution.

[fol. 696] 3. The Commission erred in accepting the Kansas minimum price of 11¢ as the legally effective price, inasmuch as such acceptance was in conflict with Sections 154.92(a) and 154.93 of its Rules and Regulations.

4. The Commission erred in accepting the minimum price of 11¢ as the legally effective price as of June 7, 1954, inasmuch as such acceptance constitutes retroactive rate making, in violation of the Natural Gas Act and the due process clause of the Constitution, and purports to accord Magnolia's filing the sanctity of a legal rate prior to the date of acceptance for filing by the Commission.

5. The Commission erred in accepting the 11¢ rate as the legally effective rate, inasmuch as such acceptance is in violation of Section 4 of the Natural Gas Act as construed by the Supreme Court in the *United Gas Pipeline case* (350 U. S. 332). By such acceptance, the Commission has permitted a unilateral change in a contract without affording Gas Company a hearing.

6. The Commission erred in accepting the 11¢ price as the legally effective price in the absence of substantial evidence and without making appropriate findings and conclusions to support its action, in violation of the Administrative Procedure Act.

7. The Commission erred in accepting Magnolia's tendered filing without requiring Magnolia to file, as a part thereof, a specimen of the coupon attached to each check issued to, and accepted by, Magnolia, for gas purchased during the period from January 1, 1954 to July 23, 1955, which set forth that payment to [fol. 697] Magnolia was being made "subject to the provisions of letters dated 8-25-53 and 1-21-54 • • • ."

8. The Commission erred in failing to find and conclude that if the Kansas Minimum Price Order is declared invalid by the United States Supreme Court, then the legally effective price from and after June 7, 1954 will automatically be the contract price of 6¢ per Mcf; and that if the validity of the Kansas Minimum Price Order is upheld by the United States Supreme Court, then the legally effective price from and after June 7, 1954 will automatically be 11¢ per Mcf.

WHEREFORE, Gas Company respectfully petitions the Commission to reconsider its order and upon such reconsideration to enter the findings and conclusions proposed in Paragraph IV above.

Respectfully submitted,

CITIES SERVICE GAS COMPANY

By /s/ CONRAD C. MOUNT
Conrad C. Mount
/s/ O. R. STITES
O. R. Stites
/s/ ROBERT R. MCCRACKEN

Attorneys for
Cities Service Gas Company
P.O. Box 1995
Oklahoma City 1, Oklahoma

[fol. 698]

Attachment "A"

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Seaborn L. Digby, Frederick Stueck, William R. Connole and Arthur Kline.

In the Matter of
Magnolia Petroleum Company

ORDER ACCEPTING RATE SCHEDULE FOR FILING

(Issued March 21, 1957)

Magnolia Petroleum Company (Magnolia) on February 19, 1957, retendered for filing as a rate schedule effective on June 7, 1954, for sales of natural gas to the Cities Service Gas Company (Cities Service), its basic contract dated June 17, 1946, together with various supplements or amendments thereto, which have been respectively designated as Magnolia's FPC Gas Rate Schedule No. 3, and Supplements Nos. 1 through 27 thereto. Magnolia proposes an effective date of January 14, 1957, for the retendered filing.

The Commission previously rejected a tendered filing of Magnolia for this sale as incomplete in that Magnolia did not submit a letter of January 21, 1954, from Cities Service conditioning the payments at the rate of 11¢ per Mcf upon the validity of the Kansas Corporation Commission Minimum Price Order and with expectation of a refund from Magnolia if the order was invalid.[1] Magnolia has now included such letter of conditional payment. The retendered filing also includes three Kansas State Corporation Commission Orders setting a minimum price of 11¢ per Mcf at 14.65 psia for gas sold from the Hugoton Field.

[1] Cities Service is contesting the validity of the Kansas order in the courts.

Cities Service objects to the filing on the grounds that the Kansas Minimum Price Order is similar to the Oklahoma Minimum Price Order heretofore found by the courts to be invalid; that Magnolia should file a copy of the monthly payment check received from Cities Service showing the conditions under which the payment is made; and that Magnolia should not make any reservations in filing, inasmuch as acceptance of the check shows acceptance of the conditions of payment. Cities Service requests that any acceptance of the filing be conditioned as being without prejudice to the rights of Cities Service in pending litigation and the rate is effective only if the Kansas Minimum Price Orders are found to be valid.

[fol. 699] *The Commission finds*:

Good cause has been shown that Magnolia's FPC Gas Rate Schedule No. 3, and Supplements Nos. 1 through 27 thereto, be accepted for filing; subject, however, to the express condition that such acceptance is without prejudice to any claims or contentions which have been made by or for Magnolia Petroleum Company or by or for Cities Service Company in pending litigation concerning this particular sale of gas.

The Commission orders:

(A) Magnolia's FPC Gas Rate Schedule No. 3, and Supplements Nos. 1 through 27 thereto are accepted for filing; subject, however, to the express condition that such acceptance is without prejudice to any claims or contentions which have been made by or for Magnolia Petroleum Company or by or for Cities Service Company in pending litigation concerning this particular sale of gas.

(B) Nothing contained in this order shall be construed as a waiver of the requirements of Section 7 of the Natural Gas Act; nor shall it be construed as constituting approval by the Commission of any service, rate, charge, classification, or any rule, regulation, or practice affecting such service or rate provided for in the above-described rate schedule, nor shall this order be deemed as recognition of

any claimed contractual right or obligation affecting or relating to such service or rate.

(C) This order is without prejudice to any findings or order which has been or may hereafter be made by this Commission in any proceeding now pending, or hereafter instituted by or against Magnolia Petroleum Company.

By the Commission.

/s/ J. H. Gutride
Joseph H. Gutride,
Secretary.

[fol. 700]

State of Oklahoma)
) SS
Oklahoma County)

Conrad C. Mount, of lawful age, being duly sworn, upon oath states that he is Vice President and General Counsel for Cities Service Gas Company, and that he has read the above and foregoing Application for Rehearing and that the matters and facts set forth therein are true and correct to the best of his knowledge and belief.

/s/ Conrad C. Mount

Subscribed and sworn to before me this 17th day of April, 1957.

/s/ Helen Lacer
Notary Public

My Commission expires
May 22, 1959

[fol. 701]

Certificate of Service

I hereby certify that I have this day served the foregoing Application for Rehearing upon Magnolia Petroleum

Company by mailing a copy thereof to Ross Madole, Magnolia Petroleum Company, P. O. Box 900, Dallas 21, Texas.

Dated this 17th day of April, 1957.

/s/ CONRAD C. MOUNT
Attorney for
Cities Service Gas Company

[fol. 702]

EXHIBIT J

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

CERTIFICATION

I hereby certify that the attached two pages are true copies of an ORDER MODIFYING ORDER ACCEPTING RATE SCHEDULE FOR FILING AND DENYING PETITIONS FOR REHEARING issued May 17, 1957 in the matter of Magnolia Petroleum Company on file with this Commission.

This 19th day of Sept., 1958.

/s/ CHARLES C. BENNINGTON
NAME
TITLE Records Officer

I hereby certify that

NAME Charles C. Bennington
TITLE Records Officer

whose signature appears above, is official custodian of the records of the Federal Power Commission to which certification is made and was such official custodian at the time of executing the above certification.

/s/ J. H. GUTRIDE
Secretary

[Seal]

[fol. 703]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Seaborn L. Digby, Frederick Stueck, William R. Connole and Arthur Kline.

In the Matter of

Magnolia Petroleum Company

ORDER MODIFYING ORDER ACCEPTING RATE SCHEDULE FOR FILING AND DENYING PETITIONS FOR REHEARING

(Issued May 17, 1957)

On April 18, 1957, Cities Service Gas Company (Cities Service) filed its application for rehearing of the Order Accepting Rate Schedule for Filing issued by the Commission on March 21, 1957. On April 19, 1957, Magnolia Petroleum Company (Magnolia) filed its application for rehearing in the same matter. The order in question accepted for filing Magnolia's FPC Gas Rate Schedule No. 3 with Supplements Nos. 1 through 27 thereto, for sales of natural gas to Cities Service.[1] Such Gas Rate Schedule and Supplements comprise a basic contract of June 17, 1946, between Magnolia and Cities Service and documents relating thereto, including three orders of the Kansas Corporation Commission (Supplements Nos. 18, 24 and 26), the latest of which established a minimum price of 11¢ per Mcf at 14.65 p.s.i.a. for the gas supplied by Magnolia.

Upon further consideration of said rate schedule and the supplements thereto, and the above-mentioned applications for rehearing, the Commission *orders*:

(A) The aforesaid order issued on March 21, 1957, be and it is hereby modified as follows:

[1] This filing constitutes Magnolia's June 7, 1954 rate schedule; see Regulations Under The Natural Gas Act, Sec. 154.91–154.102 inclusive, and is based on retender of a previous submission which did not include Supplement No. 27.

(i) The finding therein set forth is amended to read as follows:

Good cause has been shown that Magnolia's FPC Gas Rate Schedule No. 3, and Supplements Nos. 1 through 27 thereto, be accepted for filing.

[fol. 704] (ii) Paragraph "(A)" as therein set forth is amended to read as follows:

Magnolia's FPC Gas Rate Schedule No. 3, and Supplements Nos. 1 through 27 thereto, are accepted for filing.

(B) Except to the particular extent they may be deemed to have been granted by this instant order, each of said applications for rehearing is denied.

(C) As hereby specifically modified or amended, said order issued March 21, 1957, shall remain and continue in full force and effect.

By the Commission. Commissioner Connole dissenting for the reasons set forth in his statements In the Matters of Dorchester Corporation, Docket No. G-6505, and Phillips Petroleum Company, Docket No. G-10908.

/s/ J. H. Gutride
Joseph H. Gutride,
Secretary

[fol. 705]

Exhibit K

United States of America
Federal Power Commission

CERTIFICATION

I hereby certify that the attached three pages are true copies of a letter from Cities Service Gas Company, dated April 15, 1958 to Federal Power Commission on file with this Commission.

This ..... day ....., ...

/s/ Charles C. Bennington

NAME
TITLE Records Officer

I hereby certify that

NAME Charles C. Bennington
TITLE Records Officer

whose signature appears above, is official custodian of the records of the Federal Power Commission to which certification is made and was such official custodian at the time of executing the above certification.

/s/ J. H. Gutride
Secretary

[Seal]

[fol. 706]

Official File Copy
To Init. Date
RGC DM 5/12
Central Files

Received
Apr 17 10 33 AM '58
Federal Power Commission

[Emblem]

100-2 Gas Cor.

CITIES SERVICE GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY 1, OKLAHOMA

April 15, 1958

Air Mail

Federal Power Commission
Washington 25, D. C.

Attention: J. H. Gutride, Secretary

Gentlemen:

Under date of April 2, 1958 Cities Service Gas Company was served with a copy of "Supplement No. ..... to Magnolia Petroleum Company F.P.C. Gas Rate Schedule No. 89." This document purports to effect a decrease in Magnolia's Rate Schedule No. 89 by the amount of the Kansas severance tax, which was held invalid by the Kansas Supreme Court on March 8, 1958, in State Ex Rel Dole v. Kirchner, 322 P. 2d 759. To the extent that the Kansas severance tax is reflected in Magnolia's Rate Schedule No. 89 the rate therein should be reduced and Cities has no objection to such reduction.

The tendered Supplement contains, however, the following statement:

> "The rate in effect under the contract and supplements thereto on March 31, 1958 is $.110715 per Mcf at 14.65 psia., and the rate in effect on April 1, 1958 is $.11 per Mcf at 14.65 psia."

Cities does not agree that the rate in effect on March 31, 1958 was $.110715 per Mcf at 14.65 psia or that after eliminating the invalid Kansas severance tax the rate in effect on April 1, 1958, or any other date, would be $.11

per Mcf at 14.65 psia, but insists that the rate in effect at all times was the contract price of 8.4¢ per Mcf at 16.4 psia plus the Kansas severance tax and that after eliminating the Kansas severance tax the rate in effect should be 8.4¢ per Mcf at 16.4 psia.

Under the provisions of 18 C.F.R. 1.10(b) Cities Service Gas Company files its protest herewith to such filing, on the following grounds:

(1) The rate agreed upon by the parties in the basic contract between Cities and Magnolia constituting Magnolia's Rate Schedule No. 89 is now and was from its inception 8.4¢ per Mcf (16.4 psia). Under the provisions of paragraph (6)(b) of the basic contract the parties specifically agreed that pending the determination of the validity of the 11¢ Kansas Minimum Price Order Cities would pay Magnolia 11¢ per Mcf (14.65 psia), the price provided for in [fol. 707] the Kansas Minimum Price Order, and Magnolia agreed by such basic contract that it would refund to Cities the difference between the contract rate and the 11¢ Kansas minimum price, if the Kansas Minimum Price Order was declared invalid. The Kansas Minimum Price Order was held void ab initio on January 20, 1958 in the case of Cities Service Gas Company v. Corporation Commission, et al., —— U.S. ——, 2 L. Ed. 2d (Adv.) 355, and thereupon it became established that the effective rate under the basic contract is now and has always been 8.4¢ per Mcf (14.65 psia).

(2) In view of the foregoing, it is the position of Cities Service Gas Company that 11¢ per Mcf (14.65 psia) was not at any time and could not be the lawful filed rate of Magnolia and the rate should be reduced not to the invalid Kansas 11¢ price, as contended for by Magnolia, but to the 8.4¢ per Mcf basic contract price. This position is squarely supported by the decision of the Court of Appeals for the Third Circuit in Natural Gas Pipeline Company of America v. Federal Power Commission, —— F. 2d ——, decided February 26, 1958, wherein the Court said:

> "When the United States Supreme Court found Oklahoma's action to have been unlawful and set the State Commission order aside there was no longer even the

semblance of a valid law or lawful order which could modify the contract rate. The contract rate therefore under the mandate of the Supreme Court must be held to have been the rate effective on June 7, 1954."

It is, moreover, fully supported by the position of the Federal Power Commission in its brief filed in Cities Service Gas Company v. Federal Power Commission, Case No. 5666, now pending decision in the Court of Appeals for the Tenth Circuit. There the Commission said, at page 6 thereof:

"* * * The only possible justification for Magnolia's rate schedule increasing the contract price of 6¢ to 11¢ was the Kansas order which was presumptively valid on the filing date but which has now been shown to be a nullity. Hence, although the Magnolia rate was 'effective' at the time it was filed because it then was the only legal rate governing the sale, it must now be recognized that the actual rate and the legal rate during this period was the 6¢ contract price. This follows not only from the fact that the sale contract embodied the Kansas order only if it was valid (R. 39) and the contract governs unless modified by the parties, but more im- [fol. 708] portantly because the order in contemplation of law was a nullity and hence the only rate which could have been in effect during this period was the rate provided by the contract which was incorporated in Magnolia's rate schedule.[4]

[4] That is, Magnolia's schedule consisted of its contract providing a 6¢ price plus a number of supplements including one containing the Kansas order. When the order was declared void that supplement became a nullity from the filing date, and the contract schedule therefore contained the only filed rate."

(3) Since the Kansas Minimum Price Order is void ab initio and could form no valid part of Magnolia's Rate Schedule No. 89, Magnolia's unilateral declaration that its lawful rate is, or at any time was, 11¢ per Mcf (14.65 psia) is a nullity and should be so regarded by the Commission. Such unilateral action is squarely contrary to the doctrine announced by the Supreme Court of the United States in

United Gas Pipeline Company v. Mobile Gas Service Corporation, 350 U.S. 332, wherein the Court held that rates established by contract between the parties cannot be annulled by the unilateral action of one party thereto without consent of the other.

In view of all the foregoing, Cities Service Gas Company respectfully urges that the Commission by appropriate order construe, interpret and declare that Magnolia's lawful filed rate under its Rate Schedule No. 89 was 8.4¢ per Mcf (16.4 psia) plus the Kansas severance tax and now is 8.4¢ per Mcf (16.4 psia) by reason of invalidation of said severance tax.

CITIES SERVICE GAS COMPANY

By: Conrad C. Mount
O. R. Stites
Robert R. McCracken
Harry S. Littman
/s/ JACK WERNER
Jack Werner
Its Attorneys

RRM:hl

cc: Magnolia Petroleum Company
P. O. Box 900
Dallas, Texas

[fol. 709]

EXHIBIT L

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

CERTIFICATION

I hereby certify that the attached seventeen pages are true copies of the following:

1. Letter dated June 14, 1956, from the Secretary, Federal Power Commission, to the Cabot Carbon Company, re: CABOT CARBON COMPANY, FPC GAS RATE SCHEDULE Nos. 2 and 14

2. Letter dated May 16, 1956, received May 17, 1956, from Cabot Carbon Company, and enclosures thereto, re: CABOT CARBON COMPANY, FPC GAS RATE SCHEDULE No. 2

3. Letter dated May 15, 1956, received May 16, 1956, from the Cabot Carbon Company, and enclosures thereto, re: CABOT CARBON COMPANY, FPC GAS RATE SCHEDULE No. 14 on file with this Commission.

This 22nd day of April, 1959.

/s/ CHARLES C. BENNINGTON
NAME
TITLE Records Officer

I hereby certify that

NAME Charles C. Bennington
TITLE Records Officer

whose signature appears above, is official custodian of the records of the Federal Power Commission to which certification is made and was such official custodian at the time of executing the above certification.

[Seal]

/s/ J. H. GUTRIDE
Secretary

[fol. 710]
100-2 Gas Cor.

CWC Files 1
Jun 14 1956

Cabot Carbon Company
77 Franklin Street
Boston 10, Massachusetts

Attention Mr. Fred G. Fernald, Secretary

Gentlemen:

This is with reference to your letters dated May 15, 1956 and May 16, 1956 transmitting for filing changes in rate under your FPC Gas Rate Schedule Nos. 2 and 14 covering sales of gas to Cities Service Gas Company in the Hugoton Field, Kansas and Oklahoma.

Such changes in rate are conditional in that you request that they only be effective provided the price in effect under the minimum price order of the Corporation Commission of Kansas is not sustained in the courts and in the event the minimum price order of the Oklahoma Corporation Commission is attacked and not sustained in the courts.

The aforementioned changes in rate are hereby rejected since there can be only one effective rate for the gas sold within the meaning of Order No. 174-B, and because Section 4(d) of the Natural Gas Act requires that any change in rate state plainly the change to be made and the time when the change will go into effect. The conditional nature of your rate change filings do not meet this requirement.

The rejected filings are being retained in the Commission's files for reference and information.

By direction of the Commission.

LEON M. FUQUAY
Secretary
approved at 417Oth Commission meeting on June 13, 1956
M. B. K.

R & CC
EHM:mjc
6-7-56
WJD
6/8/56
RPC
OCON 6/8/56

Italics indicate handwritten material.

[fol. 711]

Received
May 17 2 59 PM '56
Federal Power Commission

CWC

TELEPHONE LIBERTY 2-7300
CABLE ADDRESS
CHANDERYAR, BOSTON

CABOT CARBON COMPANY
[Emblem]

77 FRANKLIN STREET
BOSTON 10, MASSACHUSETTS

May 16, 1956

Leon W. Fuquay, Secretary
Federal Power Commission
441 G. Street, N. W.
Washington 25, D. C.

100-2 Gas Cor.
In re: Cabot Carbon Company
FPC Gas Rate Schedule No 2

Dear Sir:

Enclosed find two copies of a change in the above entitled rate schedule filed by Cabot Carbon Company under Order 174-B.

As you will note from page 3 of the enclosure this change in rate schedule is filed to be effective only in case the Kansas Corporation Commission price order is not sustained.

Very truly yours,

CABOT CARBON COMPANY

/s/ FRED C. FERNALD
Fred C. Fernald
Secretary

JGW/rjs

Enclosures (2)

Registered Mail, Return Receipt Requested

Italics indicate handwritten material.

[fol. 712]

Received
May 17 2 59 PM '56
Federal Power Commission

COPY

GODFREY L. CABOT, INC.
INTER OFFICE CORRESPONDENCE
77 FRANKLIN STREET, BOSTON 10, MASS.,

IN REPLY TO YOUR LETTER OF

SUBJECT:

May 16, 1956

Cities Service Gas Company
First National Bank Building
Oklahoma City 1
Oklahoma

In re: Cabot Carbon Company
FPC Gas Rate Schedule No. 2

Gentlemen:

Notice is hereby given by Cabot Carbon Company of the filing with the Federal Power Commission of a change in the above entitled rate schedule under Federal Power Commission Order No. 174-B. A copy of the change in rate schedule is enclosed.

Very truly yours,

CABOT CARBON COMPANY
Original Signed
FRED C. FERNALD
Fred C. Fernald,
Secretary

JGW/rjs
Enclosure

cc: Mr. Homer D. Johnson

Registered Mail, Return Receipt Requested

[fol. 713]

Received
May 17 3 00 PM '56
Federal Power Commission

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

154.94 (a)

Cabot Carbon Company hereby files as a change in rate schedule an increase in rate under Section 6 of the contract dated March 8, 1950 between Sunflower Natural Gas Company, Inc. and Cities Service Gas Company previously filed by Cabot Carbon Company with the Commission on November 24, 1954 as a Rate Schedule (FPC Gas Rate Schedule #2) under order 174-A, as amended, and incorporated herein by reference. Cabot Carbon Company is the successor to the rights and obligations of Sunflower Natural Gas Company, Inc. under said contract.

Section 6 of said contract reads as follows:

"Section 6. Cities agrees to pay Sunflower for all gas sold and delivered hereunder the price of nine cents (9¢) per thousand (1000) cubic feet, on the basis of agreed measurement elsewhere herein recited, through June 22, 1956, and ten cents (10¢) per thousand (1000) cubic feet from June 23, 1956, to June 22, 1962, inclusive. For all natural gas delivered after June 22, 1962, the price shall be subject to adjustment each six-year (6) period as follows; but said adjusted price shall be not less than ten cents (10¢) per thousand (1000) cubic feet:

(a) Not less than six months prior to June 22, 1962, Cities and Sunflower shall endeavor to agree upon a price to be paid by Cities for gas to be sold and delivered during the next six-year (6) period.

(b) In the event that the parties hereto shall fail to agree upon said price for the next six-year (6) period earlier than four months before June 22, 1962, the deter-

mination of such price shall be by arbitration as herein provided.

(i) In the event of such arbitration, the parties hereto shall mutually select a nationally known firm of consulting engineers, experienced in the gas business, and of the highest reputation and standing, and of unimpeachable integrity, which firm shall have no interest in either Cities or Sunflower, or in the production, transportation, or sale of natural gas in the Hugoton or Texas-Panhandle gas fields.

[fol. 714]. (ii) In the event that the parties hereto cannot agree upon the selection of such a firm as arbitrator, the Senior Federal Judge of the District Court of the United States in the State of Kansas shall be requested to select such a firm to act as such arbitrator hereunder. In event of failure or refusal of such District Judge to act, then either party may request any member of the United States Circuit Court of Appeals for the Tenth Circuit to make such a selection. It is recognized that none of said Judges named has any official jurisdiction over said matter, but will act individually in making such selection.

(iii) Upon the selection of such firm as arbitrator as herein provided, said arbitrator shall proceed to determine the fair, just and reasonable price to be paid by Cities during the ensuing six-year (6) period and the decision of said arbitrator shall be final and binding upon both parties, in the absence of fraud or bad faith on the part of the arbitrator.

(iv) The arbitrator shall, within thirty (30) days from the date of its appointment, designate a time and a place for a hearing of such statements, evidence, and arguments as the parties may desire to submit, supporting the claims of either party as to the fair, just and reasonable price per thousand (1000) cubic feet of gas to be delivered by Sunflower to Cities during the ensuing six-year (6) period. Such arbitrator shall be privileged to seek the assistance of experts and men of practical experience in the natural gas business in its considerations.

(v) The fees of the arbitrator and expenses of arbitration shall be borne one-half by Sunflower and one-half by Cities.

(vi) In the event such arbitrator shall fail to reach a decision in four months after its appointment, such arbitrator shall be discharged and new arbitrator shall be selected in like manner as if no arbitrator had been chosen.

(c) Not less than six months prior to the end of each succeeding six-year (6) period, Cities and Sunflower shall commence negotiations to determine the fair, just and reasonable price to be paid by Cities for gas to be delivered hereunder during the next ensuing six-year (6) period; and in the event of failure to agree upon such price, arbitration shall proceed as hereinabove provided.

(d) It is expressly stipulated that the delivery of gas by Sunflower under this agreement shall not be interrupted because of delay in the determination of the price applicable to delivery of gas, and the delivery of gas shall continue at the previous effective price. Upon determination of the new price, the price shall be applied retro-actively to gas previously delivered in the interim.

(e) If in any fiscal accounting month, as herein defined, the average gross heating value of the gas delivered by Sunflower shall fall below nine-hundred sixty (960) BTUs per [fol. 715] cubic foot, the price then applicable hereunder, whether by agreement or by arbitration, to be paid by Cities to Sunflower for gas delivered during such month shall be decreased proportionately to the deficiency in gross heating value below nine-hundred sixty (960) BTUs per cubic foot."

Payment under protest has been made for the gas by Cities Service Gas Company in accordance with the Kansas Gas Measurement Law and under the minimum price order of the Corporation Commission of Kansas and Cities Service Gas Company has instituted court proceedings attacking said order. Applicant now files this application in order that the increase in rate as provided under the con-

tract may be made effective in the event that the price in effect under the minimum price order of the Corporation Commission of Kansas is not sustained and also should the minimum price order of the Corporation Commission of Oklahoma be attacked in a similar manner and the price under said order be not sustained.

154.94 (e)

(i) In accordance with the first paragraph of Section 6 of said contract the change in Rate Schedule is proposed to be made effective on June 23, 1956, provided the minimum price order of the Corporation Commission of Kansas is not sustained.

(ii) A comparative statement of the sales made and revenues therefrom to Cabot Carbon Company for the twelve months preceding and for the twelve months immediately following the effective date of the change in rate is attached hereto, as Exhibit A and shows (1) the sales and revenues after giving effect to the Kansas and Oklahoma minimum price orders applicable thereto for each twelve month period preceding and following the effective date, (2) sales and estimated revenues computed on the basis of the contract provisions for the twelve month period preceding the effective date and [fol. 716] (3) estimated sales and revenues computed on the basis of the contract provisions following the effective date.

154.94 (f)

The increase in the rate under this change in rate schedule is in accordance with the contract between the parties dated March 8, 1950 and is for the purpose of providing the Applicant with a just and reasonable price for its gas provided the minimum price order of the Corporation Commission of Kansas is not sustained.

Payment under protest has been made for the gas by Cities Service Gas Company in accordance with the Kansas Gas Measurement Law and under the minimum price order of the Corporation Commission of Kansas and Cities Service Gas Company has instituted court proceedings

attacking said order. Applicant now files this application in order that the increase in rate as provided under the contract may be made effective in the event that the price in effect under the minimum price order of the Corporation Commission of Kansas is not sustained and also should the minimum price order of the Corporation Commission of Oklahoma be attacked in a similar manner and the price under said order be not sustained.

A copy of this material is being sent to Cities Service Gas Company and to the Corporation Commission of Kansas. All copies are being sent by registered mail.

Reservation of Rights

Cabot Carbon Company files this change in Rate Schedule under protest and reserves all its rights under the United States Constitution and the laws of the United States to contest

(1) the validity of said order No. 174-B

(2) the applicability of said Order to Cabot Carbon Company, and

(3) the jurisdiction of the Federal Power Commission over Cabot Carbon Company under the Natural Gas Act, as amended.

[fol. 717] Cabot Carbon Company further claims that the change in Rate Schedule under its aforementioned contract of March 8, 1950 concerns a part of its production facilities, and that the gas sold and to be sold to Cities Service Gas Company is a part of the process of production and said sales by Cabot Carbon Company are outside and not within the jurisdiction of the Federal Power Commission.

May 16, 1956.

Respectfully submitted,

CABOT CARBON COMPANY

By /s/ FRED C. FERNALD
Secretary and General Counsel
77 Franklin Street
Boston 10, Massachusetts

[fol. 718]

EXHIBIT "A"

Gas Purchase Contract

EXHIBIT "A"
GAS PURCHASE CONTRACT
CITIES SERVICE GAS COMPANY
March 8, 1950
FPC Gas Rate Schedule #2

	1.						2.		3.
Date	Sales Under Kan. Gas Meas. Law Vol. 14.65 PB	Revenues Under Kan. Min. Price @ 11¢ MCF	Sales Under Okla. Gas Meas. Law Vol 14.65 PB	Revenues Under Okla. Min. Price @9.8363¢ MCF	Total Sales Under Kan. & Okla. Gas Meas. Law Vol. 14.65 PB	Total Revenues Under Kan & Okla. Min. Price Orders	Sales Under Contract Meas. Before Increase Vol. 16.4 PB	Revenues Under Contract Price Before Increase @ 9¢ MCF	Revenues Under Contract Price After Increase ¢ 10¢ MCF
				PRECEDING EFFECTIVE DATE					
July 1955	327,168 MCF	$35,988.48	15,399 MCF	$1,513.14	342,567 MCF	$37,501.62	298,033 MCF	$26,822.97	
Aug. 1955	296,093 "	32,570.23	14,819 "	1,456.14	310,912 "	34,026.37	270,493 "	24,344.37	
Sept. 1955	158,107 "	17,391.77	16,537 "	1,624.96	174,644 "	19,016.73	151,940 "	13,674.60	
Oct. 1955	137,143 "	15,085.73	24,512 "	2,408.60	161,655 "	17,494.33	140,640 "	12,657.60	
Nov. 1955	119,072 "	13,097.92	24,233 "	2,381.19	143,305 "	15,479.11	124,675 "	11,220.75	
Dec. 1955	191,750 "	21,092.50	23,363 "	2,295.70	215,113 "	23,388.20	187,148 "	16,843.32	
Jan. 1956	363,888 "	40,027.68	13,447 "	1,321.33	377,335 "	41,349.01	328,281 "	29,545.29	
Feb. 1956	445,166 "	48,968.26	10,481 "	1,029.88	455,647 "	49,998.14	396,413 "	35,677.17	
Mar. 1956	301,886 "	33,207.46	22,869 "	2,247.15	324,755 "	35,454.61	282,537 "	25,428.33	
Apr. 1956	*260,030 "	*28,603.30	*18,406 "	1,808.61	*278,436 "	*30,411.91	*242,239 "	*21,801.51	
May 1956	*260,030 "	*28,603.30	*18,406 "	*1,808.61	*278,436 "	*30,411.91	*242,239 "	*21,801.51	
June 1956	*260,030 "	*28,603.30	*18,406 "	*1,808.61	*278,436 "	*30,411.91	*242,239 "	*21,801.51	
TOTAL	3,120,363 MCF	$343,299.93	220,878 MCF	$21,703.92	3,341,241 MCF	$364,943.85	2,906,877 MCF	$261,618.93	
				FOLLOWING EFFECTIVE DATE					
July 1956	*320,625 MCF	$*35,268.75	*15,091 MCF	*1,482.87	*335,716 MCF	*36,751.62	*292,072 MCF	*26,286.48	$*29,207.20
Aug. 1956	*290,171 "	*31,918.81	*18,523 "	*1,427.06	*304,694 "	*33,345.87	*265,083 "	*23,857.47	*26,508.30
Sept. 1956	*158,985 "	*17,083.95	*16,206 "	*1,592.43	*171,151 "	*18,636.38	*148,901 "	*13,401.09	*[illegible],890.10
Oct. 1956	*138,400 "	*14,784.00	*24,022 "	*2,360.85	*158,422 "	*17,144.85	*137,827 "	*12,404.43	*13,782.70
Nov. 1956	*116,691 "	*12,836.01	*23,748 "	*2,333.53	*140,439 "	*15,169.54	*122,182 "	*10,996.38	*12,218.20
Dec. 1956	*187,915 "	*20,670.65	*22,896 "	*2,249.81	*210,811 "	*22,920.46	*183,405 "	*16,506.45	*18,340.50
Jan. 1957	*356,610 "	*39,227.10	*13,178 "	*1,294.90	*369,788 "	*40,522.00	*321,715 "	*28,954.35	*32,171.50
Feb. 1957	*436,263 "	*47,988.93	*10,271 "	*1,009.25	*446,534 "	*48,998.18	*388,485 "	*34,963.65	*38,848.50
Mar. 1957	*295,888 "	*32,543.28	*22,812 "	*2,202.25	*318,260 "	*34,745.53	*276,886 "	*24,919.74	*27,688.60
Apr. 1957	*258,829 "	*28,031.19	*18,038 "	*1,772.45	*272,867 "	*29,803.64	*237,394 "	*21,365.46	*23,739.40
May 1957	*258,829 "	*28,031.19	*18,038 "	*1,772.45	*272,867 "	*29,803.64	*237,394 "	*21,365.46	*23,739.40
June 1957	*258,829 "	*28,031.19	*18,038 "	*1,772.45	*272,867 "	*29,803.64	*237,394 "	*21,365.46	*23,739.40
TOTAL	3,057,955 MCF	$336,375.05	216,461 MCF	$21,269.90	3,274,416 MCF	$357,644.95	2,848,738 MCF	$256,386.42	$284,873.80

* Estimated

714
[fol. 719]

CABOT CARBON COMPANY

[Emblem]

CWC
Received
May 16 3 14 PM '56
Federal Power Commission

TELEPHONE LIBERTY 2-7300
CABLE ADDRESS
CHANDERYAR, BOSTON

77 FRANKLIN STREET
BOSTON 10, MASSACHUSETTS

May 15, 1956

Leon W. Fuquay, Secretary
Federal Power Commission
441 G. Street, N.W.
Washington 25, D. C.

100-2 Gas Cor.

In re: Cabot Carbon Company
FPC Gas Rate Schedule No. 14

Dear Sir:

Enclosed find two copies of a change in the above entitled rate schedule filed by Cabot Carbon Company under Order 174-B.

As you will note from page 3 of the enclosure this change in rate schedule is filed to be effective only in case the Kansas Corporation Commission price order is not sustained.

Very truly yours,

CABOT CARBON COMPANY

/s/ FRED C. FERNALD
Fred C. Fernald,
Secretary

JGW/rjs
Enclosures (2)

REGISTERED MAIL, RETURN RECEIPT REQUESTED

Italics indicate handwritten material.

[fol. 720]

COPY

Received
May 16 3 15 PM '56
Federal Power Commission

GODFREY L. CABOT, INC.

INTER OFFICE CORRESPONDENCE
77 Franklin Street, BOSTON 10, MASS.,

IN REPLY TO YOUR LETTER OF

SUBJECT:

May 15, 1956

Cities Service Gas Company
First National Bank Building
Oklahoma City 1
Oklahoma

In re: Cabot Carbon Company
FPC Gas Rate Schedule No. 14

Gentlemen:

Notice is hereby given by Cabot Carbon Company of the filing with the Federal Power Commission of a change in the above entitled rate schedule under Federal Power Commission Order No. 174-B. A copy of the change in rate schedule is enclosed.

Very truly yours,

CABOT CARBON COMPANY

Original Signed
FRED C. FERNALD
Fred C. Fernald,
Secretary

JGW/rjs
Enclosure

REGISTERED MAIL, RETURN RECEIPT REQUESTED

cc: Mr. Homer D. Johnson

[fol. 721]

Received
May 16 3 14 PM '56
Federal Power Commission

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

154.94 (a)

Cabot Carbon Company hereby files as a change in rate schedule an increase in rate under Section 6 of the contract dated March 8, 1950 between Sunflower Natural Gas Company, Inc. and Cities Service Gas Company previously filed by Cabot Carbon Company with the Commission on November 24, 1954 as a Rate Schedule (FPC Gas Rate Schedule #14) under order 174-A, as amended, and incorporated herein by reference. Cabot Carbon Company is the successor to the rights and obligations of Sunflower Natural Gas Company; Inc. under said contract.

Section 6 of said contract reads as follows:

"Section 6. Cities agrees to pay Sunflower for all gas sold and delivered hereunder the price of eight and one-fourth cents (8¼¢) per thousand (1000) cubic feet, on the basis of agreed measurement elsewhere herein recited, through June 22, 1956, and nine and sixteen-hundredths cents (9.16¢) per thousand (1000) cubic feet from June 23, 1956 to June 22, 1962, inclusive. For all natural gas delivered after June 22, 1962, the price shall be subject to adjustment each six-year (6) period as follows; but said adjusted price shall be not less than nine and sixteen-hundredths cents (9.16¢) per thousand (1000) cubic feet:

(a) Not less than six months prior to June 22, 1962, Cities and Sunflower shall endeavor to agree upon a price to be paid by Cities for gas to be sold and delivered during the next six-year (6) period.

(b) In the event that the parties hereto shall fail to agree upon said price for the next six-year (6) period earlier than four months before June 22, 1962, the determination of such price shall be by arbitration as herein provided.

(i) In the event of such arbitration, the parties hereto shall mutually select a nationally known firm of consulting engineers, experienced in the gas business, and of the highest reputation and standing, and of unimpeachable integrity, which firm shall have no interest in either Cities or Sunflower or in the production, transportation, or sale of natural gas in the Hugoton or Texas-Panhandle gas fields.

[fol. 722] (ii) In the event that the parties hereto cannot agree upon the selection of such a firm as arbitrator, the Senior Federal Judge of the District Court of the United States in the State of Kansas shall be requested to select such a firm to act as such arbitrator hereunder. In the event of failure or refusal of such District Judge to act, then either party may request any member of the United States Circuit Court of Appeals for the Tenth Circuit to make such a selection. It is recognized that none of said Judges named has any official jurisdiction over said matter, but will act individually in making such selection.

(iii) Upon the selection of such firm as arbitrator as herein provided, said arbitrator shall proceed to determine the fair, just and reasonable price to be paid by Cities during the ensuing six-year (6) period and the decision of said arbitrator shall be final and binding upon both parties, in the absence of fraud or bad faith on the part of the arbitrator.

(iv) The arbitrator shall, within thirty (30) days from the date of its appointment, designate a time and a place for a hearing of such statements, evidence, and arguments as the parties may desire to submit, supporting the claims of either party as to the fair, just and reasonal e price per thousand (1000) cubic feet of gas to be delivered by Sunflower to Cities during the ensuing six-year (6) period. Such arbitrator shall be privileged to seek the assistance of experts and men of practical experience in the natural gas business in its considerations.

(v) The fees of the arbitrator and expenses of arbitration shall be borne one-half by Sunflower and one-half by Cities.

(vi) In the event such arbitrator shall fail to reach a decision in four months after its appointment, such arbitrator shall be discharged and new arbitrator shall be selected in like manner as if no arbitrator had been chosen.

(c) Not less than six months prior to the end of each succeeding six-year (6) period, Cities and Sunflower shall commence negotiations to determine the fair, just and reasonable price to be paid by Cities for gas to be delivered hereunder during the next ensuing six-year (6) period; and in the event of failure to agree upon such price, arbitration shall proceed as hereinabove provided.

(d) It is expressly stipulated that the delivery of gas by Sunflower under this agreement shall not be interrupted because of delay in the determination of the price applicable to delivery of gas, and the delivery of gas shall continue at the previous effective price. Upon determination of the new price, the price shall be applied retro-actively to gas previously delivered in the interim.

[fol. 723] (e) If in any fiscal accounting month, as herein defined, the average gross heating value of the gas delivered by Sunflower shall fall below nine-hundred sixty (960) BTUs per cubic foot, the price then applicable hereunder, whether by agreement or by arbitration, to be paid by Cities to Sunflower for gas delivered during such month shall be decreased proportionately to the deficiency in gross heating value below nine-hundred sixty (960) BTUs per cubic foot."

Payment under protest has been made for the gas by Cities Service Gas Company in accordance with the Kansas Gas Measurement Law and under the minimum price order of the Corporation Commission of Kansas and Cities Service Gas Company has instituted court proceedings attacking said order. Applicant now files this application in order that the increase in rate as provided under the contract may be made effective in the event that the price in effect

under the minimum price order of the Corporation Commission of Kansas is not sustained.

154.94 (e)

(i) In accordance with the first paragraph of Section 6 of said contract the change in Rate Schedule is proposed to be made effective on June 23, 1956, provided the minimum price order of the Corporation Commission of Kansas is not sustained.

(ii) A comparative statement of the sales made and revenues therefrom to Cabot Carbon Company for the twelve months preceding and for the twelve months immediately following the effective date of the change in rate is attached hereto as Exhibit A and shows (1) the sales and revenues after giving effect to the Kansas minimum price order for each twelve month period preceding and following the effective date, (2) sales and estimated revenues computed on the basis of the contract provisions for the twelve month period preceding the effective date and (3) estimated sales and [fol. 724] revenues computed on the basis of the contract provisions following the effective date.

154.94 (f)

The increase in the rate under this change in rate schedule is in accordance with the contract between the parties dated March 8, 1950 and is for the purpose of providing the Applicant with a just and reasonable price for its gas provided the minimum price order of the Corporation Commission of Kansas is not sustained.

Payment under protest has been made for the gas by Cities Service Gas Company in accordance with the Kansas Gas Measurement Law and under the minimum price order of the Corporation Commission of Kansas and Cities Service Gas Company has instituted court proceedings attacking said order. Applicant now files this application in order that the increase in rate as provided under the contract may be made effective in the event that the price in effect under the minimum price order of the Corporation Commission of Kansas is not sustained.

A copy of this material is being sent to Cities Service Gas Company and to the Corporation Commission of Kansas. All copies are being sent by registered mail.

Reservation of Rights

Cabot Carbon Company files this change in Rate Schedule under protest and reserves all its rights under the United States Constitution and the laws of the United States to contest

(1) the validity of said Order No. 174-B

(2) the applicability of said Order to Cabot Carbon Company, and

(3) the jurisdiction of the Federal Power Commission over Cabot Carbon Company under the Natural Gas Act, as amended.

[fol. 725] Cabot Carbon Company further claims that the change in Rate Schedule under its aforementioned contract of March 8, 1950 concerns a part of its production facilities, and that the gas sold and to be sold to Cities Service Gas Company is a part of the process of production and said sales by Cabot Carbon Company are outside and not within the jurisdiction of the Federal Power Commission.

May 14, 1956.

Respectfully submitted,

CABOT CARBON COMPANY

By /s/ FRED C. FERNALD
Secretary and General Counsel
77 Franklin Street
Boston 10, Massachusetts

EXHIBIT "A"

GAS PURCHASE CONTRACT
CITIES SERVICE GAS COMPANY
March 8, 1950

[fol. 726]

FPC Gas Rate Schedule #14

EXHIBIT A

GAS PURCHASE CONTRACT

Month	1. Sales Under Kansas Gas Measurement Low Volume 18.68 PB	1. Revenues Under Kansas Minimum Price @ 11¢ MCF	2 Sales Under Contract Measurement Volume 15.025 PB	2 Revenues Under Contract Price Before Increase @ 8.35¢ MCF	3. Revenues Under Contract Price After Increase @ 9.16¢ MCF
		PRECEDING EFFECTIVE DATE			
July 1955	12,062 MCF	$ 1,326.82	11,459 MCF	$ 945.37	
Aug. 1955	3,828 "	421.08	3,637 "	300.05	
Sept. 1955	1,151 "	126.61	1,093 "	90.17	
Oct. 1955	12,073 "	1,328.03	11,469 "	946.19	
Nov. 1955	9,302 "	1,023.22	8,837 "	729.05	
Dec. 1955	880 "	96.80	836 "	68.97	
Jan. 1956	13,124 "	1,443.64	12,468 "	1,028.61	
Feb. 1956	16,317 "	1,794.87	15,501 "	1,278.83	
Mar. 1956	7,368 "	810.48	7,000 "	577.50	
Apr. 1956	*8,456 "	*930.16	*8,033 "	*662.72	
May 1956	*8,456 "	*930.16	*8,033 "	*662.72	
June 1956	*8,456 "	*930.16	*8,033 "	*662.72	
TOTAL	101,473 MCF	$11,162.03	96,399 MCF	$7,952.90	
		FOLLOWING EFFECTIVE DATE			
July 1956	*11,821 MCF	$ *1,300.31	*11,230 MCF	$ *926.48	$ *1,028.67
Aug. 1956	* 3,751 "	* 412.61	* 3,564 "	*294.03	* 326.46
Sept. 1956	* 1,129 "	* 124.19	* 1,071 "	* 88.36	* 98.10
Oct. 1956	*11,832 "	*1,301.52	*11,240 "	*927.30	*1,029.58
Nov. 1956	* 9,116 "	*1,002.76	* 8,660 "	*714.45	* 793.26
Dec. 1956	* 862 "	* 94.82	* 819 "	* 67.57	* 75.02
Jan. 1957	*12,862 "	*1,414.82	*12,219 "	*1,008.07	*1,119.26
Feb. 1957	*15,991 "	*1,759.01	*15,191 "	*1,253.26	*1,391.50
Mar. 1957	* 7,221 "	* 794.31	* 6,860 "	* 565.95	* 628.38
Apr. 1957	* 8,287 "	* 911.57	* 7,872 "	* 649.44	* 721.08
May 1957	* 8,287 "	* 911.57	* 7,872 "	* 649.44	* 721.08
June 1957	* 8,287 "	* 911.57	* 7,872 "	* 649.44	* 721.08
TOTAL	99,446 MCF	$10,939.06	94,470 MCF	$7,793.79	$8,653.47

* Estimated

RECEIVED
MAY 16 3 14 PM '56
FEDERAL POWER COMMISSION

[fol. 727]

Exhibit M

United States of America

Federal Power Commission

I, Joseph H. Gutride, Secretary of the Federal Power Commission, and official custodian of the minutes of said Commission, do hereby certify that the attached three pages are true and correct copies of pages numbers 63917, 63922 and 64052 from the minutes of the Commission's meeting of June 13, 1956.

In witness whereof I have hereunto subscribed my name and caused the seal of the Federal Power Commission to be affixed this 4th day of May, A. D., 1959, at Washington, D. C.

[Seal]

/s/ J. H. Gutride
Secretary

[fol. 728] 63917

Minutes of the Four Thousand One Hundred Seventy-First Meeting

The Commission convened at 10:00 a.m. on June 13, 1956.

Present: Chairman Kuykendall, Commissioners Draper, Digby and Connole.

The minutes of the 4161st, 4163rd, 4164th 4166th and 4167th meetings of May 31, June 4, 5, 7 and 8, respectively, were read and approved. (Commissioner Digby, not having been present at the meeting of May 31, did not vote on the question of approval of the minutes for that date. Commissioner Connole, not having been present at the meeting of June 7, did not vote on the question of approval of the minutes for that date. Commissioner Draper not having been present at the meeting of June 8, did not vote on the question of approval of the minutes for that date.)

Action was taken, as set forth in the documents appended hereto, in the following matters:

(1) Docket No. G-6503, Continental Oil Company
Docket No. G-6821, Knox Oil Company
Docket No. G-6823, Wyopark Oil Company
Docket No. G-6824, Oxford Oil Company
Docket No. G-7771, Fred M. Manning
Docket No. G-7772, Estate of E. E. Brown
Docket Nos. G-6624 and G-7404, Fred Goodstein d/b/a Trigood Oil Company
(Order modifying and affirming decision of Presiding Examiner)
(Commissioner Digby filed a concurring statement)

(2) Docket No. DA-384-Colorado, Colorado Department of Highways
(Determination for highway right-of-way under Section 24 of the Federal Power Act)

(3) Project No. 516, South Carolina Electric & Gas Company
(Finding and order approving exhibit)

(4) Project No. 1956, Lyles Ford Tri-County Power Authority
(Order dismissing application for license)

(5) Project No. 2047 (New York, Stewart's Bridge), Niagara Mohawk Power Corporation
(Order determining actual legitimate original cost)

[fol. 729] 63922

(49) Docket No. G-3176, Phillips Petroleum Company
(Letter to Michigan-Wisconsin Pipe Line Company concerning interpretation of orders issued in above docket)

(50) Letter to Cabot Carbon Company, rejecting filings for changes in rate under its FPC Gas Rate Schedules Nos. 2 and 14 covering sales of gas to Cities

Service Gas Company in the Hugoton Field, Kansas and Oklahoma

****

The Commission considered the rate filings identified on the attached Table, IP 709, dated June 8, 1956, and voted to suspend the filings of C. W. Alexander, et al. listed on Line 5 for five months from the expiration of statutory notice, June 21, 1956, and the filing of N. B. Hunt listed on Lines 8 through 12 for five months from the expiration of statutory notice, June 14, 1956. All other filings were accepted with no specification of effective date for the June 7, 1956, filing. The increases listed on Lines 2-3, the favored-nations increase listed on Line 6, and the periodic increases listed on Lines 1 and 7 are to become effective 30 days after filing or the requested effective date, whichever is later. The filing companies are to be advised of this action by appropriate form letters.

****

The Commission considered the rate filings identified on the attached Table, IP 724, dated June 8, 1956, and accepted all of them with waiver of notice granted where necessary to permit the eight initial rate schedules to become effective on the date of initial delivery or the date of authorization of the sale, whichever date is later. The filing companies are to be advised of this action by appropriate form letters.

Thereupon, the Commission adjourned.

Jerome K. Kuykendall
Chairman

ATTEST:

/s/ LEON M. FUQUAY
Secretary

[fol. 730] 64052

FEDERAL POWER COMMISSION
WASHINGTON 25

Cabot Carbon Company
77 Franklin Street
Boston 10, Massachusetts

Attention: Mr. Fred C. Fernald, Secretary

Gentlemen:

This is with reference to your letters dated May 15, 1956 and May 16, 1956 transmitting for filing changes in rate under your FPC Gas Rate Schedules Nos. 2 and 14 covering sales of gas to Cities Service Gas Company in the Hugoton Field, Kansas and Oklahoma.

Such changes in rate are conditional in that you request that they only be effective *provided* the price in effect under the minimum price order of the Corporation Commission of Kansas is not sustained in the courts and in the event the minimum price order of the Oklahoma Corporation Commission is attacked and not sustained in the courts.

The aforementioned changes in rate are hereby rejected since there can be only one effective rate for the gas sold within the meaning of Order No. 174-B, and because Section 4(d) of the Natural Gas Act requires that any change in rate state plainly the change to be made and the time when the change will go into effect. The conditional nature of your rate change filings do not meet this requirement.

The rejected filings are being retained in the Commission's files for reference and information.

By direction of the Commission.

Secretary

[fol. 731]

EXHIBIT N

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

CERTIFICATION

I hereby certify that the attached two pages are true copies of an ORDER REVISING RULING OF PRESIDING EXAMINER, adopted July 13, 1955, issued July 14, 1955, In the Matter of: Tennessee Gas Transmission Company, Docket No. G-5259 on file with this Commission.

This 6th day of May, 1959.

/s/ CHARLES C. BENNINGTON
NAME
TITLE Records Officer

I hereby certify that

NAME Charles C. Bennington
TITLE Records Officer

whose signature appears above, is official custodian of the records of the Federal Power Commission to which certification is made and was such official custodian at the time of executing the above certification.

[Seal]

/s/ J. H. GUTRIDE
Secretary

[fol. 732]

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, Frederick Stueck and William R. Connole

In the Matter of	)	
	)	Docket No. G-5259
Tennessee Gas Transmission Company	)	
	)	

ORDER REVISING RULING OF PRESIDING EXAMINER

On June 22, 1955, the Presiding Examiner certified to the Commission, pursuant to the provisions of Section 1.28 of the Commission's Rules of Practice and Procedure (18 CFR 1.28), an appeal by counsel for Tennessee Gas Transmission Company, (Tennessee) from a ruling made by the Presiding Examiner in this proceeding (T. 219). The Presiding Examiner ruled that the party-interveners here would be permitted to make inquiries with respect to a number of contracts renegotiated by Tennessee with certain of its producer-suppliers for the purchase of natural gas at increased rates although the increased rates in such contracts had been duly filed with the Commission as supplements to rate schedules and are presently effective rates. For the purpose of his ruling, the Presiding Examiner distinguished the increased rates in such renegotiated contracts from increased rates resulting from the operation of various escalation provisions in other contracts between Tennessee and its producer-suppliers. With respect to the latter category, the Presiding Examiner refused to permit the party-interveners to inquire into the justness and reasonableness of the increased rates, which rates had been duly filed with the Commission and are presently effective rates. The Presiding Examiner conceived that the parties could inquire, for example, whether the renegotiated contracts providing for the purchase of natural gas at in-

creased rates were arrived at as a result of collusion, rather than by arm's length bargaining.

The ruling which had been made the subject of appeal involves the action of the Presiding Examiner overruling an objection by counsel for Tennessee to questions propounded to a witness concerning a number of contracts renegotiated by Tennessee with certain of its producer-suppliers at increased rates. Counsel for Tennessee argued that the questions were indirect inquiries into the reasonableness of the rates and charges of producer-suppliers to Tennessee, which increased rates and charges are the duly filed and presently effective rates on file with the Commission. On the other hand, the proponent of the question urged that it was necessary to inquire whether the renegotiated contracts were reasonable from the standpoint of Tennessee, and whether such contracts were improvident or unreasonable from the standpoint of Tennessee's customers. It was further contended that, if such renegotiated contracts were [fol. 733] improvident, the purchased gas costs related to such contracts should be disallowed in Tennessee's cost of service in this proceeding.

Preliminarily, it may be noted that no party to this proceeding has suggested that such renegotiated contracts were the product of collusion. (T. 203).

Upon consideration of the appeal from the ruling of the Presiding Examiner, arguments of counsel, and the contentions of the parties set forth in the extensive portions of the transcript of record referred to by the Presiding Examiner, we find that the Presiding Examiner should have sustained the objection of counsel for Tennessee.

We have today denied the appeal of party-interveners in this proceeding from a ruling of the Presiding Examiner sustaining the objection of counsel for Tennessee to questions concerning the reasonableness of increased rates and charges of producer-suppliers to Tennessee resulting from the operation of various escalation provisions in the contracts between Tennessee and such producer-suppliers, and which increases in rates were duly filed and were the presently effective rates on file with the Commission. There is no valid distinction between rates made effective under dif-

ferent circumstances. The basic underlying fact is that they are presently effective rates in either instance. Such rates may not be attacked collaterally. Accordingly, we shall reverse the ruling of the Presiding Examiner as hereinafter ordered.

The Commission *orders*:

The ruling of the Presiding Examiner made on June 16, 1955, during the course of hearing in this proceeding overruling the objection to questions relating to the reasonableness of rates and charges contained in contracts renegotiated between Tennessee Gas Transmission Company and certain of its producer-suppliers be and the same is hereby reversed.

By the Commission. Commissioner Connole not participating.

Leon M. Fuquay,
Secretary.

Adopted: July 13, 1955

Issued: July 14, 1955

[fol. 734]

EXHIBIT O

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

CERTIFICATION

I hereby certify that the attached three pages are true copies of an ORDER AFFIRMING RULING OF PRESIDING EXAMINER AND DENYING APPEAL, adopted July 13, 1955, issued July 14, 1955, In the Matter of: Tennessee Gas Transmission Company, Docket No. G-5259 on file with this Commission.

This 6th day of May, 1959.

/s/ CHARLES C. BENNINGTON
NAME
TITLE Records Officer

I hereby certify that

NAME Charles C. Bennington
TITLE Records Officer

whose signature appears above, is official custodian of the records of the Federal Power Commission to which certification is made and was such official custodian at the time of executing the above certification.

[Seal]

/s/ J. H. GUTRIDE
Secretary

[fol. 735]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, Frederick Stueck and William R. Connole.

In the Matter of	)	
	)	Docket No. G-5259
Tennessee Gas Transmission Company	)	

ORDER AFFIRMING RULING OF PRESIDING EXAMINER AND DENYING APPEAL

On June 22, 1955, the Presiding Examiner certified to the Commission, pursuant to Section 1.28 of the Commission's Rules of Practice and Procedure (18 CFR 1.28), an appeal by counsel for Hope Natural Gas Company, The East Ohio Gas Company, Peoples Natural Gas Company,

and New York State Natural Gas Company from a ruling made by the Presiding Examiner on June 16, 1955, during the course of hearing in this proceeding (T. 284). Numerous interveners joined in the appeal. In substance, the Presiding Examiner ruled that the reasonableness of the increased rates and charges of producer-suppliers for natural gas sold to Tennessee Gas Transmission Company (Tennessee) was not a proper issue in this proceeding, where such increased rates and charges (a) resulted from the operation of various escalation provisions in the contracts between Tennessee and such producer-suppliers and (b) such increases in rates were duly filed as rate schedule supplements and permitted to become effective pursuant to the provisions of the Natural Gas Act (T. 273-78).

This proceeding concerns the lawfulness of the increased rates and charges proposed by Tennessee in its filing of November 3, 1954, the use of which was suspended until December 15, 1954, by order issued November 26, 1954, and until such further time as such rates and charges might become effective in the manner prescribed by the Natural Gas Act. By order issued December 28, 1954, the increased rates and charges filed by Tennessee were allowed to become effective on December 15, 1954, subject to a satisfactory undertaking to assure refund of excess charges found by the Commission to be not justified. Tennessee proposed to increase its rates and charges by an amount of $8,616,000 per year, which Tennessee claims is required to compensate it for the increase in purchased gas costs. Tennessee has now completed the presentation of its direct testimony purporting to support the rate increase sought. Currently the hearing is in recess until July 18, 1955.

The ruling which has been made the subject of appeal involves the action of the Presiding Examiner sustaining an objection by counsel for Tennessee to questions propounded to a witness concerning the reasonableness of the increased rates and charges of the producer-suppliers. The increased rates and charges of such producer-suppliers were permitted to become effective, in the main, on Novem- |fol. 736| ber 1, 1954, pursuant to changes in rate schedules duly filed under Section 4(d) of the Natural Gas Act and

the Commission's regulations thereunder. The interrogation which led to the objection was pursued by interveners in accordance with their stated position in petitions to intervene and in opening statements that the producer-suppliers rate increases are not just and reasonable, and should not be wholly allowed as part of Tennessee's cost of service in the instant proceeding.

Upon consideration of the appeal from the ruling of the Presiding Examiner, the arguments of counsel, and the contention of the parties set forth in the extensive portions of the transcript of record referred to by the Presiding Examiner, we find and determine that the ruling of the Presiding Examiner sustaining the objection of counsel from Tennessee should be affirmed and the appeal therefrom should be denied.

There would seem to be no room for argument that in this proceeding we are concerned solely with the reasonableness of the increased rates and charges proposed by Tennessee, and not with the rates and charges of producer-suppliers to Tennessee. We fully understand and appreciate the concern the interveners herein express with respect to the rates and charges of the producer-suppliers to Tennessee. But neither the Natural Gas Act nor fundamental law provides interveners herein a right to test the reasonableness of such rates and charges which are in no way at issue in this proceeding.

The producer-suppliers rates, the reasonableness of which interveners seek to probe here, are rates and charges which have become effective pursuant to filed rate schedules. The rates set forth in the effective rate schedules are legal rates. They represent the only rates which the producer-suppliers to Tennessee may charge, and which Tennessee may pay. Such rates being fixed and certain cannot now be changed except in proceedings instituted under Section 5(a) of the Natural Gas Act. That section gives the Commission the power, after hearing, to determine by order the just and reasonable rates to be thereafter observed and in force.

Clearly, interveners here cannot inquire into the justness and reasonableness of the producer-suppliers rates in this

proceeding. If such inquiry is desired, interveners' remedy lies elsewhere in the Natural Gas Act and not by a collateral attack here. For these reasons we shall deny the appeal of the interveners as hereinafter ordered.

The interveners have also requested opportunity for the filing of briefs and oral argument before the Commission in support of their appeal. The Commission is unable to perceive the necessity for oral argument before it or for the filing of briefs. Accordingly, we find that oral argument and the filing of briefs as requested are unnecessary to a proper determination of the issues raised by the appeal, and the request therefore should be denied as hereinafter ordered.

[fol. 737] The Commission *orders*:

(A) The ruling of the Presiding Examiner made on June 16, 1955, during the course of hearing in this proceeding sustaining an objection to questions relating to the reasonableness of the rates and charges of producer-suppliers to Tennessee Gas Transmission Company, be and the same is hereby affirmed, and the appeal from such ruling by interveners herein be and the same is hereby denied.

(B) The request of interveners herein for the filing of briefs and for oral argument in support of their appeal be and the same is hereby denied.

By the Commission. Commissioner Connole not participating.

Leon M. Fuquay
Secretary.

Adopted: July 13, 1955

Issued: July 14, 1955

[fol. 738] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 739]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Civil Action No. 722

1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

PAN AMERICAN PETROLEUM CORPORATION, a corporation, Defendant.

AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT—Filed June 22, 1959

State of Oklahoma
County of Tulsa ss.

Be it remembered that on this 15th day of June, 1959 personally appeared before me, the subscriber, a Notary Public for the County and State aforesaid, John F. Jones, who, having been sworn in due form of law, doth depose of his own knowledge as follows:

1. That he is and was at all times involved herein an attorney for the defendant, Pan American Petroleum Corporation, and as such represented said defendant before the Federal Power Commission and is familiar with all of defendant's rate filings with said Commission relating to the sale of natural gas involved in this action.

2. That the documents tendered on November 16, 1954 by defendant to the Federal Power Commission for filing as defendant's rate schedule applicable to the sale of natural gas involved herein by means of Exhibit 6-A attached to plaintiff's Motion for Summary Judgment consisted of

all of the documents contained in Exhibit 3 attached to said motion except Items (a) through (e) and (f) through (l) enumerated in plaintiff's description of said documents and that affiant hereby makes that part of said Exhibit 3 not excepted above a part hereof by reference the same as if fully set out herein.

[fol. 740] 3. That said documents excepted by paragraph 2 above were tendered by defendant to said Commission for filing subsequent to November 16, 1954, as changes in said rate schedule as follows, the following documents were tendered in connection therewith and the Federal Power Commission took the following actions with respect thereto:

(i) Item (b) of plaintiff's Exhibit 3 was tendered for filing by defendant with the Federal Power Commission on May 4, 1955 by means of letter of transmittal dated May 3, 1955, a true and correct copy of which is attached hereto as Exhibit A and made by reference a part hereof.

(ii) Item (c) of plaintiff's Exhibit 3 was tendered for filing by defendant with the Federal Power Commission on May 12, 1955 by means of letter of transmittal dated May 11, 1955, a true and correct copy of which is attached hereto as Exhibit B and made by reference a part hereof.

(iii) Item (b) of plaintiff's Exhibit 3 was duly accepted for filing by the Federal Power Commission as Supplement No. 78 to defendant's said Rate Schedule No. 84 by a letter authorization issued by said Commission on June 14, 1955, prescribing an effective date of June 4, 1955, a true and correct copy of said letter authorization is attached hereto as Exhibit C and made a part hereof.

(iv) Item (c) of plaintiff's Exhibit 3 was duly accepted for filing by the Federal Power Commission as Supplement No. 79 to defendant's said Rate Schedule No. 84 by a letter authorization issued by said Commission on June 29, 1955, prescribing an effective date of June 12, 1955, a true and correct copy of said letter authorization is attached hereto as Exhibit D and made a part hereof.

(v) Pursuant to Order No. 197 of the Federal Power Commission (22 F.R. 3754), a true and correct copy of

which is attached hereto as Exhibit E and made a part hereof, Item (f) of plaintiff's Exhibit 3 was tendered for filing by defendant with the Federal Power Commission on July 1, 1957 and is hereby made a part hereof.

[fol. 741] (vi) A certified copy of the official minutes of the meeting held on July 24, 1957 by the Commissioners comprising the Federal Power Commission at which said Item (f) was considered is attached to defendant's Answer as Exhibit "D" and is made by reference a part hereof.

(vii) Item (f) of plaintiff's Exhibit 3 was duly accepted for filing by the Federal Power Commission as Supplement No. 80 to defendant's said Rate Schedule No. 84 by a letter authorization issued by said Commission on August 19, 1957, prescribing an effective date therefor of July 1, 1957, a true and correct copy of said letter authorization is attached hereto as Exhibit F and made by reference a part hereof and, upon the issuance thereof, a copy of said letter authorization was placed in the public files and records of the Federal Power Commission.

(viii) Items (g) through (k), respectively, of plaintiff's Exhibit 3 were tendered for filing by defendant with the Federal Power Commission on September 26, 1957 by means of a letter of transmittal dated September 23, 1957, a true and correct copy of said letter of transmittal being attached hereto as Exhibit G and made by reference a part hereof.

(ix) Items (g) through (k) of plaintiff's Exhibit 3 were duly accepted for filing by the Federal Power Commission as Supplement Nos. 81 through 85, respectively, to defendant's said Rate Schedule No. 84 by a letter authorization issued by said Commission on October 18, 1957, prescribing an effective date for Supplement No. 81 of October 30, 1956, prescribing an effective date for Supplement Nos. 82 and 83 of November 9, 1956, and prescribing an effective date for Supplement Nos. 84 and 85 of January 2, 1957, a true and correct copy of said letter authorization is attached hereto as Exhibit H and made by reference a part hereof.

(x) Item (l) of plaintiff's Exhibit 3 was tendered for filing by defendant with the Federal Power Commission on January 9, 1958 by means of a letter of transmittal dated January 6, 1958, a true and correct copy of which is attached hereto as Exhibit I and made by reference a part hereof.

[fol. 742] (xi) Item (l) of plaintiff's Exhibit 3 was duly accepted for filing by the Federal Power Commission as Supplement No. 86 to defendant's said Rate Schedule No. 84 by a letter authorization issued by said Commission on February 26, 1958, a true and correct copy of said letter authorization is attached hereto as Exhibit J and made by reference a part hereof.

(xii) Item (a) of plaintiff's Exhibit 3 was tendered by defendant to the Federal Power Commission for filing on February 19, 1957.

4. That all of the documents tendered by defendant to the Federal Power Commission for filing on November 16, 1954, as defendant's rate schedule applicable to the sale of natural gas involved herein, including Items (d) and (e) of the plaintiff's Exhibit 3, were stapled together at the time of their tender.

5. That a certified copy of the official minutes of the meeting held on January 26, 1955 of the Commissioners constituting the Federal Power Commission at which the documents tendered by defendant on November 16, 1954 for filing as defendant's rate schedule applicable to the sale of natural gas involved herein is attached to defendant's Answer as Exhibit "A" and is hereby made by reference a part hereof; and that a certified copy of the letter authorization issued by said Commission on March 2, 1955, advising defendant of the action taken and determinations made on January 26, 1955, with respect to said tender of November 16, 1954, is attached to defendant's Answer as Exhibit "B" and is hereby made by reference a part hereof, and, upon the issuance thereof, a copy of said letter authorization of March 2, 1955, was placed in the public files and records of the Federal Power Commission.

6. That prior to November 16, 1954 defendant had not tendered any rate filing to the Federal Power Commission in connection with the sale of natural gas involved herein.

John F. Jones.

Sworn to and Subscribed before me the day and year first aforesaid.

Roena M. Stander, Notary Public.

My Commission expires: June 22, 1962.

[Seal]

[fol. 743]

EXHIBIT A TO AFFIDAVIT

Re: Supplement to Rate Schedule No. 84 of STANOLIND OIL AND GAS COMPANY for Sale of Natural Gas as an Independent Producer under Section 4 of the Natural Gas Act, in accordance with Federal Power Commission Order No. 174-B issued December 17, 1954 (Stanolind No. 18,196)

MAY 3, 1955

Secretary,
Federal Power Commission,
Washington, D. C.

Dear Sir:

On November 16, 1954, Stanolind Oil and Gas Company filed, as its initial rate, Stanolind Contract No. 18,196, which has been designated Stanolind Rate Schedule No. 84. Said rate schedule covers the sale by Stanolind to Cities Service Gas Company of natural gas from the Hugoton Field of Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton, and Hamilton Counties, Kansas. Said contract, which is dated June 23, 1950, has previously been amended by seventy-seven supplements.

Stanolind transmits herewith two photostats of an amendment dated April 5, 1955, between Stanolind and Cities Service. Said amendment, upon being appended to Stanolind's Rate Schedule No. 84, will become Supplement No. 78 thereto.

Very truly yours,

/s/ JOHN F. JONES
John F. Jones
Attorney for
Stanolind Oil and Gas Company

[fol. 744]

EXHIBIT B TO AFFIDAVIT

Re: Supplement to Rate Schedule No. 84 of STANOLIND OIL AND GAS COMPANY for Sale of Natural Gas as an Independent Producer under Section 4 of the Natural Gas Act, in accordance with Federal Power Commission Order No. 174-B, issued December 17, 1954 (Stanolind No. 18,196) MAY 11, 1955

Secretary,
Federal Power Commission,
Washington, D. C.

Dear Sir:

On November 16, 1954, Stanolind Oil and Gas Company filed, as its initial rate, Stanolind Contract No. 18,196, which has been designated Stanolind Rate Schedule No. 84. Said rate schedule covers the sale by Stanolind to Cities Service Gas Company of natural gas from the Hugoton Field of Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton, and Hamilton Counties, Kansas. Said contract, which is dated June 23, 1950, has previously been amended by seventy-eight supplements.

Stanolind transmits herewith two photostats of an amendment dated April 12, 1955, between Stanolind and Cities Service. Said amendment, upon being appended to Stano-

lind's Rate Schedule No. 84, will become Supplement No. 79 thereto.

Very truly yours,

/s/ JOHN F. JONES
John F. Jones
Attorney for
Stanolind Oil and Gas Company

[fol. 745]

EXHIBIT C TO AFFIDAVIT

Address All Communications
To The Secretary

FEDERAL POWER COMMISSION
Washington 25

June 14, 1955

Stanolind Oil and Gas Company
511 South Boston Avenue
Tulsa 3, Oklahoma

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing and that such rate schedules have become effective on the dates shown, upon expiration of thirty days' statutory notice.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price redetermination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the effective rates and charges, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's rules under such Act as promulgated by this Commission's Order No. 174-B. The Act and the Commission's rules require that such changes be

filed with the Commission not more than 90 nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

Very truly yours,

/s/ Leon M. Fuquay
Secretary

Rate Schedule Designation
Stanolind Oil and Gas Company

Description of Document	Date of Letter of Transmittal	F.P.C. Gas Rate Schedule No.	Supplement No.	Effective Date
Letter of 7/27/54	5/4/55	8	8	6/4/55
Sup. Agree. of 7/27/54	5/4/55	8	9	6/4/55
Letter of 4/5/55	5/4/55	84	78	6/4/55
Letter of 2/28/55	5/4/55	117	5	6/4/55
Sup. Agree. of 1/1/55	5/4/55	129	5	6/4/55

cc: Dow, Lohnes and Albertson

[fol. 746]

EXHIBIT D TO AFFIDAVIT

Address all Communications
To The Secretary

FEDERAL POWER COMMISSION
Washington 25

June 29, 1955

Stanolind Oil and Gas Company
511 South Boston Avenue
Tulsa, Oklahoma

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing and that such rate schedules have become effective on the dates shown, upon expiration of thirty days' statutory notice.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the effective rates and charges, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's rules under such Act as promulgated by this Commission's Order No. 174-B. The Act and the Commission's rules require that such changes be filed with the Commission not more than 90 nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any pro-

ceeding now pending or hereafter instituted by or against your company.

Very truly yours,

/s/ Leon M. Fuquay
Secretary

Rate Schedule Designation
Stanolind Oil and Gas Company

Description of Document	Date of Letter of Transmittal	F.P.C. Gas Rate Schedule No.	Supplement No.	Effective Date
Letter of 4/12/55	5/12/55	84	79	6/12/55

cc: Dow, Lohnes and Albertson

[fol. 747]

Exhibit E to Affidavit

United States of America

Federal Power Commission

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, William R. Connole and Arthur Kline.

In the Matter of

The 1% Severance Tax of
The State of Kansas
[House Bill No. 383]

ORDER NO. 197

Order Modifying Rules and Regulations With Respect to Supplements Reflecting the 1% Severance Tax of the State of Kansas

(Issued May 23, 1957)

Pursuant to House Bill No. 383 enacted by the Legislature of the State of Kansas in its 1957 regular session, a severance tax of 1% effective July 1, 1957, will be levied upon

every person engaged in the business of producing or severing oil or gas within the State of Kansas.

The incidence of such tax may result in increases in the rates paid by the purchasers under all rate schedules for sales of natural gas produced in Kansas which contain provisions whereby the buyer is to reimburse the seller for any portion of such tax. The Natural Gas Act and Section 154.94 of the Commission's Regulations make it mandatory that such increases in rates be timely and properly filed with the Commission.

To simplify the required change, the Commission deems it proper and in the public interest to waive the 30-day notice requirement under Section 4 (d) of the Act and Section 154.98 of the Commission's Regulations and to eliminate, to the extent feasible, the data and information to be submitted in support of the change.

Accordingly, a producer, in submitting a supplement to any of its rate schedules on file with the Commission to reflect the incidence of the above-described 1% tax as of July 1, 1957, may, notwithstanding other provisions of the Commission's Regulations, make such filings as hereinafter provided. Early filing will be of assistance in orderly processing.

DC-41

[fol. 748] *The Commission finds*:

It is appropriate and in the public interest in the administration of the Natural Gas Act (a) to waive the 30-day notice requirement provided in Section 4 (d) of the Natural Gas Act and Section 154.98 of the Commission's Regulations thereunder (Order No. 174-B), with respect to the filing of any appropriate supplement reflecting the incidence of the 1% State of Kansas severance tax as of July 1, 1957, provided such filing is made on or before July 1, 1957, and (b) with respect to the filing of any appropriate supplement reflecting the incidence of the 1% State of Kansas severance tax, to submit 3 copies of the data in the form set forth below, in lieu of the data required by Section 154.94 of the Commission's Regulations (Order No. 174-B):

1. This filing is submitted pursuant to Commission Order No. ..... to reflect ..... % reimbursement of the Kansas gas severance tax of 1% effective July 1, 1957 levied on producers by act of the Kansas Legislature in House Bill No. 383.

2. Such reimbursement is provided by Section .... of the contract dated ..... between ..... and ..... on file with the Commission and designated ..... FPC Gas Rate Schedule No. .....

3. A copy of this filing was served on the buyer as required by the Commission's Regulations on .....

4. Comparison of rates prior to and subsequent to such change in rate (Cents per MCF):

Date	Base Price Per Mcf	Tax Reimbursement Per Mcf	Total Price Per Mcf
June 30, 1957			
July 1, 1957			

Sales for 12 months ending March 31, 1957 ..... Mcf.

The Commission orders:

Rate Schedules reflecting the incidence of the 1% severance tax of the State of Kansas as of July 1, 1957, if filed on or before July 1, 1957, may be filed on less than the 30 days' notice required by Section 4 (d) of the Natural Gas Act and in accordance with the findings of this order.

By the Commission.

/s/ Joseph H. Gutride
Joseph H. Gutride,
Secretary.

[Emblem]

[fol. 749]

EXHIBIT G TO AFFIDAVIT

September 23, 1957

Letter of Transmittal

Supplement to Pan American Petroleum Corporation FPC Gas Rate Schedule No. 84. (Pan American Contract No. 18,196, Hugoton Field, Haskell and Kearny Counties, Kansas)	Supplement No. 81 to FPC Gas Rate Schedule No. 84

Secretary
Federal Power Commission
Washington 25, D. C.

Dear Sir:

1. Subject to all of the reservations set out in the Application for a Certificate of Public Convenience and Necessity in FPC Docket No. G-4904 and in the original filing of the above described contract as a Rate Schedule and while denying that it is a natural gas company under the Natural Gas Act, or that it is subject to the jurisdiction of the Commission with respect to the transaction described herein, Pan American Petroleum Corporation (Pan American), as an independent producer, pursuant to Section 154.94 of the Commission's Regulations under the Natural Gas Act, transmits herewith for the information of the Commission the following:

A true and correct copy of Assignment dated October 30, 1956, and true and correct copies of two Assignments dated November 9, 1956, and two Assignments dated January 2, 1957, all from Stanolind Oil and Gas Company (now Pan American Petroleum Corporation) to Graham-Michaelis Drilling Company. (Exhibit "A")

which assign certain acreage subject to the gas sales contract.

2. It is requested that all inquiries and correspondence regarding this notice be addressed to the following:

John F. Jones, Attorney
Pan American Petroleum Corporation
511 South Boston Avenue
Tulsa 2, Oklahoma

with a copy to the undersigned.

Respectfully,

PAN AMERICAN PETROLEUM CORPORATION

By /s/ NORTON STANDEVEN
Norton Standeven, Its Attorney
P. O. Box 1654
Oklahoma City, Oklahoma

Attachments:

Exhibit "A", Assignments

[fol. 750]

EXHIBIT H TO AFFIDAVIT

Address All Communications
To The Secretary

FEDERAL POWER COMMISSION
Washington 25

Oct. 18, 1957

Pan American Petroleum Corporation
c/o Dow, Lohnes and Albertson
Munsey Building
Washington 4, D. C.

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing, that

notice is hereby waived and that such rate schedules shall be effective as of the dates shown.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the effective rates and charges, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 174-B. The Act and the Commission's Rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

In future correspondence with the Commission concerning the rate schedules listed below, please refer to the FPC Gas Rate Schedule designation furnished you herewith, including the name of the independent producer and the rate schedule and supplement numbers.

By direction of the Commission.

J. H. Gutride
Secretary

Rate Schedule Designation

Pan American Petroleum Corporation

Description of Document	Date of Letter of Transmittal	F.P.C. Gas Rate Schedule No.	Supplement No.	Effective Date
Assignment 10-30-56	9-26-57	84	81	10-30-56
Assignment 11-9-56 (Wheatley lease)	9-26-57	84	82	11- 9-56
Assignment 11-9-56 (Dennis and other leases)	9-26-57	84	83	11- 9-56
[fol. 751]				
Assignment 1-2-57 (Weber lease)	9-26-57	84	84	1- 2-57
Assignment 1-2-57 (Bower and other leases)	9-26-57	84	85	1- 2-57

cc: Mr. John F. Jones
Pan American Petroleum Corporation
P. O. Box 591
Tulsa 2, Oklahoma

Mr. Norton Standeven
Pan American Petroleum Corporation
P. O. Box 1654
Oklahoma City 1, Oklahoma

[fol. 752]

EXHIBIT I TO AFFIDAVIT

Jan. 6, 1958

Letter of Transmittal

Supplement to Pan American Petroleum Corporation FPC Gas Rate Schedule No. 84. (Pan American Contract No. 18,196, Hugoton Field, Kansas.)	Supplement No. 86 to FPC Gas Rate Schedule No. 84

Secretary
Federal Power Commission
Washington 25, D. C.

Dear Sir:

1. Subject to all of the reservations set out in the Application for a Certificate of Public Convenience and Necessity in FPC Docket No. G-4904 and in the original filing of the above described contract as a Rate Schedule and while denying that it is a natural gas company under the Natural Gas Act, or that it is subject to the jurisdiction of the Commission with respect to the transaction described herein, Pan American Petroleum Corporation, as an independent producer, pursuant to Section 154.94 of the Commission's Regulations under the Natural Gas Act, transmits herewith for the information of the Commission, the following:

> A true and correct copy of Assignment, dated June 26, 1956, from Stanolind Oil and Gas Company (Now Pan American Petroleum Corporation) to Edwin G. Bradley. (Exhibit "A")

which assigns certain acreage subject to the gas sales contract.

2. It is requested that all inquiries and correspondence regarding this notice be addressed to the following:

John F. Jones, Attorney
Pan American Petroleum Corporation
511 South Boston Avenue
Tulsa 3, Oklahoma

with a copy to the undersigned.

Respectfully,

PAN AMERICAN PETROLEUM CORPORATION

By /s/ NORTON STANDEVEN
Norton Standeven
Division Attorney
P. O. Box 1654
Oklahoma City, Oklahoma

Attachments:

Exhibit "A", Assignment

[fol. 753] EXHIBIT J TO AFFIDAVIT

Address All Communications
To The Secretary

FEDERAL POWER COMMISSION
Washington 25

Feb. 26, 1958

Pan American Petroleum Corporation
c/o Dow, Lohnes and Albertson
Washington 4, D. C.

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing, that notice is hereby waived and that such rate schedules shall be effective as of the dates shown.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the effective rates and charges, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section

154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 174-B. The Act and the Commission's Rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

In future correspondence with the Commission concerning the rate schedules listed below, please refer to the FPC Gas Rate Schedule designation furnished you herewith, including the name of the independent producer and the rate schedule and supplement numbers.

By direction of the Commission.

J. H. Gutride
Secretary

Rate Schedule Designation

Pan American Petroleum Corporation

Description of Document	Date of Letter of Transmittal	F.P.C. Gas Rate Schedule No.	Supplement No.	Effective Date
Assignment 6-26-56	1-9-58	84	86	6-26-56

cc: John F. Jones, Legal Dept.
Pan American Petroleum Corporation
P. O. Box 591
Tulsa, Oklahoma

Norton Standeven
Pan American Petroleum Corporation
P. O. Box 1654
Oklahoma City, Oklahoma

[fol. 754] [File endorsement omitted]

Acknowledgment of service (omitted inprinting).

[fol. 755]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Civil Action No. 722 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

PAN AMERICAN PETROLEUM CORPORATION, a corporation, Defendant.

AFFIDAVIT OF NORTON STANDEVEN IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT— Filed June 22, 1959

State of Oklahoma,
County of Oklahoma, ss.

Be it remembered that on this 12th day of June, 1959, personally appeared before me, the subscriber, a Notary Public for the County and State aforesaid, Norton Standeven, who, having been sworn in due form of law, doth depose of his own knowledge as follows:

1. That he is and was at all times involved herein Division Attorney for defendant's Central Division with offices located in Oklahoma City, Oklahoma, that the Hugoton Gas Field in Kansas is within the geographical area of the defendant's operations assigned to its Central Division, and that he is familiar with all of defendant's rate schedule filings with the Federal Power Commission relating to the sale of natural gas involved in this action.

2. That, during the period commencing May 14, 1955, and ending January 1, 1958, inclusive, he mailed to plaintiff, addressed as indicated below, with postage prepaid, the respective letters listed below on the respective dates set forth in connection therewith advising plaintiff that the respective documents transmitted therewith or referred to

therein were being tendered to the Federal Power Commission for filing:

[fol. 756] A. Letter dated June 28, 1957, mailed on June 28, 1957, enclosing a true and correct copy of item (f) of Exhibit 3 attached to plaintiff's Motion for Summary Judgment, to Cities Service Gas Company, P. O. Box 1995, Oklahoma City 1, Oklahoma.

B. Letter dated September 23, 1957, mailed on September 23, 1957, enclosing a true and correct copy of the letter of transmittal dated September 23, 1957, described in subparagraph (viii) of paragraph 3 of the affidavits filed herein of John F. Jones in support of defendant's Motion for Summary Judgment and in opposition to plaintiff's Motion for Summary Judgment, to Cities Service Gas Company, P. O. Box 1995, Oklahoma City, Oklahoma.

Norton Standeven.

Sworn to and subscribed before me the day and year first above written.

Helen L. Billupo, nee Rawlins, Notary Public.

My commission expires:

Helen L. Rawlins, Notary Public, in and for State of Oklahoma, My Commission Expires February 13, 1960.

(Seal)

[fol. 757] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 758]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Civil Action No. 722 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

PAN AMERICAN PETROLEUM CORPORATION, a corporation, Defendant.

AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT—Filed June 22, 1959

State of Oklahoma,
County of Tulsa, ss.

Be it remembered that on this 15th day of June, 1959, personally appeared before me, the subscriber, a Notary Public for the County and State aforesaid, Carroll L. Gilliam, who, having been sworn in due form of law, doth depose of his own knowledge as follows:

1. That he is an attorney with offices at 600 Munsey Building, Washington 4, D.C.; that as such he has represented Pan American Petroleum Corporation, defendant herein, before the Federal Power Commission, Washington, D.C.; that he is familiar with the rate filings of said defendant involved herein and which appear herein as Exhibit 3 to Plaintiff's Motion for Summary Judgment, and which are on file with the Federal Power Commission; and that he is familiar with the public files and records of the Federal Power Commission relating thereto.

2. That he has examined the public files and records of the Federal Power Commission containing and consisting of the documents which are now designated therein as Pan American Petroleum Corporation (Operator) *et al.* F.P.C. Gas Rate Schedule No. 84, and formerly designated therein as Stanolind Oil and Gas Company F.P.C. Gas Rate Sched-

ule No. 84, and which public files and records include documents tendered for filing on November 16, 1954 and bearing the Federal Power Commission's designation of the aforesaid Rate Schedule Number and Supplement Nos. 1 through 77 thereto, and documents tendered for filing on [fol. 759] July 1, 1957 and bearing the Federal Power Commission's designation of Supplement No. 80 thereto.

3. That his examination of the public files and records of the Federal Power Commission containing and consisting of the aforesaid Rate Schedule, including Supplements thereto, reveals that said public files and records do not contain, include, show, or otherwise reflect the tender, transmittal, filing or any other communication of a protest, complaint, or any other form of objection by Cities Service Gas Company, plaintiff herein, to the tender on November 16, 1954 and July 1, 1957 for filing by the defendant herein of the aforesaid Rate Schedule, or any Supplements thereto or parts thereof, or to the acceptance for filing of the aforesaid documents by Federal Power Commission action on January 26, 1955, and July 24, 1957, as is reflected by Exhibit "A", Exhibit "B", Exhibit "D", and Exhibit "E" to defendant's Answer filed herein, and which said Exhibits are made a part hereof.

4. That his examination of the public files and records of the Federal Power Commission containing and consisting of the aforesaid Rate Schedule, including Supplements thereto, reveals that said public files and records do not contain, include, show or otherwise reflect the tender, transmittal, filing, or any other communication of a motion, petition, application or other form of pleading seeking reconsideration of or rehearing upon action of the Federal Power Commission on January 26, 1955, and July 24, 1957, as is reflected by the Exhibits described in paragraph 3 above, accepting for filing documents now designated as Pan American Petroleum Corporation (Operator) *et al.* F.P.C. Gas Rate Schedule No. 84, including documents designated as Supplement Nos. 1 through 77 and Supplement No. 80 thereto, within the periods provided for the filing of such motion, petition, or application for rehear-

ing by Section 19(a) of the Natural Gas Act, 52 Stat. 831 (1938); 15 U.S.C. § 717r.

5. That he has examined the public files and records of the Federal Power Commission containing official correspondence by and between the Federal Power Commission and Cities Service Gas Company, plaintiff herein, and containing official correspondence by and between the Federal Power Commission and Pan American Petroleum Corporation, defendant herein; and that his examination of aforesaid public files and records reveals that the aforesaid public files and records do not contain, include, show, or otherwise reflect the tender, transmittal, filing, or any other communication of a protest, complaint or any other form of objection by Cities Service Gas Company, plaintiff herein, to the tender for filing on November 16, 1954, and July 1, 1957, of documents comprising the aforesaid Rate Schedule, including Supplements thereto, or to the action of the Federal Power Commission on January 26, 1955, and July 24, 1957, accepting said documents for filing as is reflected by the Exhibits described in paragraph 3 above, between November 16, 1954 and July 1, 1957, the dates of tender for filing by defendant herein of the documents described in paragraph 2 above, and June 25, 1958, the date of service of the Complaint by Cities Service Gas Company, plaintiff herein, in the above-styled Civil Action No. 722, 1958.

[fol. 760]

Carroll L. Gilliam.

Sworn and subscribed to before me the year and day first above written.

Roena M. Stander, Notary Public.

My Commission Expires June 22, 1962.
(Seal)

[fol. 761] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 762]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Civil Action No. 722 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

PAN AMERICAN PETROLEUM CORPORATION, a corporation, Defendant.

AFFIDAVIT OF RALPH L. MAREK IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT — Filed June 22, 1959

State of Oklahoma,
County of Tulsa, ss.

Be it remembered that on this 12th day of June, 1959 personally appeared before me, the subscriber, a Notary Public for the County and State aforesaid, Ralph L. Marek, who, having been sworn in due form of law, doth depose of his own knowledge as follows:

1. That he is and was at all times involved herein Gas Sales Superintendent for the defendant at its General Office in Tulsa, Oklahoma, and is familiar with all of defendant's rate schedule filings with the Federal Power Commission relating to sale of natural gas involved in this action.

2. That, during the period commencing November 16, 1954 and ending May 13, 1955, inclusive, he mailed to plaintiff, addressed as indicated below, with postage prepaid, the respective letters listed below on the respective dates set forth in connection therewith advising plaintiff that the respective documents transmitted therewith or referred to therein were being tendered to the Federal Power Commission for filing:

[fol. 763] A. Letter dated November 16, 1954, mailed on November 16, 1954, enclosing a true and correct copy of Exhibit 6A attached to plaintiff's Motion for Summary Judgment, to Cities Service Gas Company, Oklahoma City 1, Oklahoma.

B. Letter dated May 4, 1955, mailed on May 4, 1955, enclosing a true and correct copy of the letter of transmittal dated May 3, 1955, which tendered for filing with the Federal Power Commission item (b) to Exhibit 3 attached to plaintiff's Motion for Summary Judgment, to Cities Service Gas Company, First National Bank Building, Oklahoma City, Oklahoma.

C. Letter dated May 13, 1955, mailed on May 13, 1955, enclosing a true and correct copy of the letter of transmittal dated May 11, 1955, which tendered for filing with the Federal Power Commission item (c) to Exhibit 3 attached to plaintiff's Motion for Summary Judgment, to Cities Service Gas Company, Post Office Box 1995, Oklahoma City, Oklahoma.

Ralph L. Marek.

Sworn to and subscribed before me the day and year first above written.

Ruth S. Gebo, Notary Public.

My Commission expires: June 30, 1960.

(Seal).

[fol. 764] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 765]

EXHIBIT 2G TO DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF

Gas-Sale
May 16, 1955
832 RLM
836 PBE

[Emblem]

CITIES SERVICE GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY 1, OKLAHOMA

Legal Division

May 13, 1955

Stanolind Oil and Gas Company
Stanolind Building
Tulsa, Oklahoma

Attention: Mr. Ralph L. Marek

Re: Contract Date: 6-23-50
Location: Kansas-Hugoton Field

Gentlemen:

Our Company is purchasing gas from you from the above described Field under the terms of the captioned Contract. Under the terms of the Natural Gas Act and Federal Power Commission Order 174 as Amended, our Company is authorized to make payments for natural gas purchased only pursuant to filed Rate Schedules of each Independent Producer. In order to complete our files, it is respectfully requested that you furnish us, at your convenience, copies of the following items which have been checked pertaining to your sale to our Company under the above described Contract:

( ) Statement of price and pressure base contained in Rate Schedule.

( ) Letter of transmittal of Rate Schedule.

( ) A complete list of documents filed as Rate Schedule or Supplements or Amendments thereof.

(√) All correspondence from the Federal Power Commission relating to your Rate Schedule.

( ) Copy of Application for Certificate of Public Convenience and Necessity.

(√) All correspondence from Federal Power Commission relating to your Application for Certificate.

(√) All Orders of Federal Power Commission relating to your Certificate Application and Rate Schedule filing.

With respect to any corespondence from the Federal Power Commission, we are particularly interested in the dates upon which your Rate Schedules and Certificate Applications were accepted for filing, the Federal Power Commission Rate Schedule number, the Docket Number assigned to your Certificate Application, and date of issuance of Certificate.

We will greatly appreciate your prompt cooperation in this matter as this information is needed in order for us to make payments for gas purchased from you.

Very truly yours,

/s/ Robert N. Berry
Robert N. Berry
Attorney

RNB:m

[fol. 766]

EXHIBIT 2H TO DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF

STANOLIND OIL AND GAS COMPANY
Stanolind Building
Tulsa, Oklahoma

May 20, 1955

File: RLM-405-960.4

Re: Contracts SO&G No. 15,533
West Edmond Plant
SO&G No. 18,196
Hugoton Field, Kansas

Cities Service Gas Company
First National Building
Oklahoma City 1, Oklahoma

Attention: Mr. Robert N. Berry

Gentlemen:

Pursuant to the request in your two form letters of May 13, 1955, we are attaching copies of the following items pertaining to our filings with the Federal Power Commission under the subject contracts:

Contract No. 15,533

1. FPC Order suspending proposed change in rate (Supplement No. 6 to Rate Schedule No. 121)
2. FPC letter dated April 13, 1955, assigning rate schedule and supplement numbers.
3. Statement of price and pressure base contained in rate schedule.

Contract No. 18,196

1. FPC letter dated March 2, 1955, assigning rate schedule and supplement numbers.

Yours very truly,

/s/ Ralph L. Marek

cc: Mr. R. H. Westhoff

PBE:bbs

[fol. 767]

EXHIBIT 2I TO DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF

PAN AMERICAN PETROLEUM CORPORATION
Fidelity National Building
Oklahoma City, Oklahoma

P. O. Box 1654

August 29, 1957

File: RHW-992-400.01

Effective Date for Reimbursement of Kansas Severance Tax under Gas Purchase Contract

Cities Service Gas Company
P. O. Box 1995
Oklahoma City, Oklahoma

Gentlemen:

Attached is copy of communication from the Federal Power Commission advising of the acceptance for filing and effective date of filings relative to reimbursement for Kansas Severance Tax under contract between you and us in the state of Kansas.

Yours very truly,

/s/ R. H. Westhoff
R. H. Westhoff

LSL:wln

Attachment

[fol. 767a] [File endorsement omitted]

[fol. 768]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Civil Action No. 722 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

PAN AMERICAN PETROLEUM CORPORATION, a corporation, Defendant.

Brief in Support of Motion for Summary Judgment—Filed August 14, 1959

NATURE OF ACTION

This action was commenced by plaintiff against defendant to recover overpayments made by plaintiff for gas purchased from defendant during the period January 1, 1954 through November 22, 1957.

The period involved covers the time during which plaintiff was engaged in litigating the validity of an Order of the Corporation Commission of Kansas fixing a minimum price of 11¢ per Mcf for the gas purchased by plaintiff from defendant. This litigation terminated in a final determination by the Supreme Court of the United States that the Kansas minimum price order was void, *in toto* and *ab initio*, upon the ground that the state had no power or [fol. 769] authority to fix the price for gas sold in interstate commerce. *Cities Service Gas Company* v. *State Corporation Commission*, 355 U.S. 391, 2 L. Ed. 2d 355 (1958), reversing 304 P. 2d 528; and *Cities Service Gas Company* v. *State Corporation Commission of Kansas*, 337 P. 2d 640.

* * * * * * *

[fol. 771] 1. For its Fourth defense defendant makes the shocking claim that it has avoided its solemn contractual obligation to refund the overpayments by violating the law. Defendant says that by refusing to file its contract to refund with the Federal Power Commission and by misrepresenting to the Federal Power Commission that it was collecting 11¢ unconditionally, it has, by its own wrongdoing, created for itself an 11¢ price and has made the contract unenforceable. We shall discuss this matter at length under Proposition III, pages *70-71*.

Suffice it to say here, that defendant's rate schedule fixed the price at 8.4¢ and no more. The fact that defendant was actually receiving 11¢ (upon condition of refund) has nothing to do with the determination of its effective rate.

Kerr-McGee Oil Industries, Inc. v. *Federal Power Commission*, 260 F. 2d 602 at 604 (10 Cir.—1958):

> "It is now established beyond doubt that the legally effective rate on June 7, 1954, is not necessarily the rate being billed and charged on that date. It is not the billing and charging which control the effective rate, rather the effective June 7, 1954 rate is one which has accrued by force of the contract as of that date by virtue of the then existing operative facts, whether charged, billed or legally determined. (citing cases) To paraphrase Judge Phillips in the most recent Phillips case, the correct and effective sale price is the price which Kerr-McGee was entitled to receive and Phillips obligated to pay on June 7, 1954, under the terms of their contract."

[fol. 772] If defendant could not make for itself an 11¢ filed rate by showing that it was collecting 11¢, it certainly could not do so by refusing to show that the 11¢ was being collected conditionally.

2. *For its Eighth Defense*, defendant alleges that plaintiff's January 21, 1954 letter, Exhibit I, and its January 28, 1954 answer, Exhibit II, were directed at payments made under the Kansas minimum price Order only. Thus,

says defendant, the payments made after its rate filing were not subject to the refund letters. Defendant cannot so easily escape the effect of its rate filing.

In its filing defendant represented unequivocally that its rate schedule fixed its price at 8.4¢ per Mcf and that its sole claim to an 11¢ price depended upon the validity of the minimum price Order. Each check defendant received for four years bore the legend that the payments were made subject to the terms of plaintiff's January 21, 1954 letter, Exhibit XIV. That letter provides for the conditional and involuntary payment of the 11¢ ordered price in strict compliance with the State order and the payments were made and received pursuant to the State order.

3. *As its Tenth Defense* defendant challenges the jurisdiction of this Court to make any change in defendant's rate schedule. This defense is beside the point. Plaintiff seeks here merely to enforce its right to a refund of the payments [fol. 773] made in excess of the contract rate which is necessarily the same rate as is fixed in its rate schedule. There can be no question but that a court of general jurisdiction has the duty to construe, apply and enforce defendant's rate schedule.

Magnolia Petroleum Co. v. *Texas Illinois Nat. Gas P. Co.*, (USDC—Texas—1954), 130 F. Supp. 890 at 894:

> "The defendant answers that the price itself is in dispute; that the contract price is not controlling, and the correct price must be determined by the Commission. But the Commission has no authority to award a money judgment if in fact the plaintiff be entitled thereto; and when reached for trial on the merits, this Court may determine what the lawful rate may have been at the time in question (whether fixed by contract or by Commission order), and may enter such judgment as the facts warrant."

Great Northern Ry. Co. v. *Merchants Elevator Co.*, 259 U.S. 285 at 294 (1922):

> "The task to be performed is to determine the meaning of words of the tariff, which were used in their ordi-

nary sense and to apply that meaning to the undisputed facts. That operation was solely one of construction; and preliminary resort to the Commission was therefore, unnecessary."

(G) *The law permits no deviation from defendant's filed rate of 8.4¢ per Mcf.*

We have shown that defendant's filed rate schedule fixes the price for this gas at the contract rate, 8.4¢ per Mcf at 16.4# psia. Defendant cannot claim any other price. [fol. 774] The rate fixed by defendant's rate schedule is binding upon plaintiff and defendant and upon this Court with the force and effect of federal statute.

Montana-Dakota Util. Co. v. *Northwestern P.S.C.* (U.S. S.Ct.—1950), 341 U.S. 246 at 251, 95 L. Ed. 912:

"* * * It can claim no rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the Commission, and not even a Court can authorize commerce in the commodity on other terms."

Northwestern Pub. Serv. Co. v. *Montana-Dakota Util. Co.*, (U.S.C.A.—8—1950), 181 F. 2d 19 at 22:

"Moreover, the transmission of electric energy being at wholesale and interstate, the seller must collect the charge named in the filed rate and the purchaser must pay that rate. *So long as the filed rate is not changed in the manner provided by the Act it is to be treated as though it were a statute, binding upon the seller and the purchaser alike.* Texas & Pac. Ry. Co. v. Cisco Oil Mill, 204 U.S. 449, 27 S. Ct. 358, 51 L. Ed. 562; Pennsylvania R. Co. v. International Coal Mining Co., 230 U.S. 184, 197, 33 S. Ct. 893, 57 L. Ed. 1446, Ann. Cas. 1915A, 315; Pillsbury Flour Mills Co. v. Great Northern Ry. Co., 8 Cir., 25 F. 2d 66, 68." (Emphasis ours)

Hope Natural Gas Co. v. *Federal Power Commission* (C.C.A.—4—1943), 134 F. 2d 287 at 311; *McClellan* v. *Montana-Dakota Utilities Co.* (U.S.C.S.—Minn.—1952), 104 F. Supp. 46 at 50.

Rates filed with the Federal Power Commission are binding upon both defendant seller and plaintiff purchaser with the force and effect of statute.

[fol. 775] The Commission's regulation, 18 CFR § 154.21, is simply a restatement of this well-established law. It prohibits the sale of natural gas at any rate other than the filed rate.

These principles of law are of long standing and are well established in the field of filed rate schedules of all regulated businesses. The rule has been consistently and repeatedly applied in cases involving rate schedules filed with the Interstate Commerce Commission as well as those filed with the Federal Power Commission.

Pennsylvania R. Co. v. *International Coal Min. Co.*, (U.S. S.Ct.—1913), 230 U.S. 184, 57 L. Ed. 1446, at 1451:

> "* * * The tariff, so long as it was of force, was, in this respect, to be treated as though it had been a statute, binding as such upon railroad and shipper alike. * * *"

Louisville & N.R. Co. v. *Maxwell* (U.S.S.Ct.—1915), 237 U.S. 94, 59 L. Ed. 853, at 855; *Lowden* v. *Simonds-Shields-Lonsdale Grain Co.*, (U.S.S.Ct.—1939), 306 U.S. 516, 83 L. Ed. 953 at 957.

Defendant cannot claim that its rates are other than those filed either on account of waiver, acquiescence or estoppel.

Pittsburgh C.C. & St. L.R.Co. v. *Fink* (1919), 250 U.S. 577, 63 L. Ed. 1151. At 582:

> "Nor can the defendant in error successfully invoke the principle of estoppel against the right to collect the legal rate. Estoppel could not become the means of successfully avoiding the requirements of the act as to equal rates in violation of the provisions of the statute."

[fol. 776] This rule is restated and the cases collected in *Sola Elec. Co.* v. *Jefferson Elec. Co.* (1942) 317 U.S. 173, 87 L. Ed. 165, at 176:

> "The Federal courts have been consistent in holding that local rules of estoppel will not be permitted to

thwart the purposes of statutes of the United States. See, in the case of federal statutes governing interstate freight rates, *Pittsburgh, C.C. & St. L.R.Co.* v. *Fink*, 250 U.S. 577, 582, 583, 63 L. Ed. 1151, 1153, 1154, 40 S.Ct. 27; *Chesapeake & O.R. Co.* v. *Martin*, 283 U.S. 209, 220-222, 75 L. Ed. 983, 989, 990, 51 S. Ct. 453; cf. *Atchison, T. & S.F.R. Co.* v. *Harold*, 241 U.S. 371, 60 L. Ed. 1050, 36 S. Ct. 665; and federal statutes affecting national banks, *Awotin* v. *Atlas Exch. Bank*, 295 U.S. 209, 79 L. Ed. 1393, 55 S.Ct. 674, supra; *Dietrick* v. *Greaney*, 309 U.S. 190, 84 L. Ed. 694, 60 S. Ct. 480, supra."

Under Order 174, the parties cannot even by their written contract make an effective change in their rate without filing the basis thereof with the Federal Power Commission and obtaining an order finding the change justified. Any other procedure would nullify regulation. It would be absurd to deny the parties the right to change rates by their solemn written agreement on the one hand and then permit, on the other, such changes to be effectuated through action, failure to act, or other conduct which is not even reduced to writing and concerning which the parties to a producer-contract are themselves not in agreement. To say that regulated rates can be changed by acquiescence, voluntary payment or other action by one of the parties without complying with the applicable regulatory law would be contrary to public policy as it would [fol. 777] defeat and destroy regulation.

(H) *There is and can be no issue of fact with respect to defendant's filed rate schedule and summary judgment should be rendered for plaintiff.*

Defendant's reliance upon its filed rate schedule as a defense presents the classic occasion for summary judgment. There neither is nor can be any question of fact in regard to this defense. The Court has before it a pure question of law.

Defendant's rate schedule filed with the Federal Power Commission is wholly documentary. There can be no other evidence which will bear one way or another on what the rate schedule is. Defendant's rate schedule consists of a single set of documents, defendant's filed rate schedule, concerning which there never can be any dispute.

As we have shown above, defendant's rate schedule consists of the basic contract and supplements and agreements amendatory thereof effective and applicable on June 7, 1954. Within the limits of this definition the Court will find in the documentary evidence just one effective and applicable rate—8.4¢ per Mcf at 16.4# psia.

Once the Court has determined what rate is fixed by defendant's filed rate schedule, the Court is bound, as a matter of law, to enforce that rate. There can be no deviation from the rate schedule upon any excuse. Defendant's [fol. 778] defense of its filed rate schedule fits squarely into the language of 56(c), Rules of Procedure (Civil) of the Superior Court of Delaware:

> "* * * The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. * * *"

* * * * * * *

[fol. 778a] [File endorsement omitted]

[fol. 779]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Civil Action No. 722, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—v.—

PAN AMERICAN PETROLEUM CORPORATION, a corporation, Defendant.

Brief of Plaintiff in Opposition to Defendant's Motion for Summary Judgment—Filed October 12, 1959

Defendant has filed herein its Motion for Summary Judgment on two grounds: (1) that notwithstanding that the Kansas minimum price Order was invalid for want of jurisdiction, it was nevertheless valid until July 16, 1954; and, (2) that although the price Order was admittedly invalid in and of itself, its filing with the Federal Power Commission gave it validity. The Motion is identical with the Motions filed in this Court in Actions Numbered 670, 671 and 708—1958. Defendant has filed its "Main Brief of Defendant in Support of its Motion for Summary Judgment." That Brief is identical in all material respects [fol. 780] with "Main Brief of Defendants in Support of Their Motion for Summary Judgment" filed in each of the above numbered causes in behalf of Columbian Fuel Corporation and The Texas Company, defendants therein.

Accordingly, plaintiff adopts as its Answering Brief herein its "Brief of Plaintiff in Opposition to Defendants' Motion for Summary Judgment" and "Memorandum Brief of Plaintiff" heretofore filed in Civil Actions Numbered 670, 671 and 708—1958. For the convenience of the Court,

there are attached hereto copies of such Briefs marked "A" and "B", respectively.

Respectfully submitted,

John J. Morris, Jr., Howard L. Williams, Morris, James, Hitchens & Williams, 701 Bank of Delaware Building, Wilmington, Delaware, Attorneys for Plaintiff.

Of Counsel: Conrad C. Mount, Robert R. McCracken, Gordon J. Quilter, Charles V. Wheeler, First National Building, Oklahoma City, Oklahoma.

[fol. 781]

EXHIBIT "A" TO BRIEF OF PLAINTIFF IN OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff, —v.— COLUMBIAN FUEL CORPORATION, a corporation, Defendant.	Civil Actions No. 670 and 708, 1958
CITIES SERVICE GAS COMPANY, a corporation, Plaintiff, —v.— THE TEXAS COMPANY, a corporation, Defendant.	Civil Action No. 671, 1958

[fol. 782]

Brief of Plaintiff in Opposition to Defendants' Motions for Summary Judgment

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Nature of Action

Plaintiff Cities Service Gas Company seeks in each action a money judgment against the respective defendant.[1] The sums sought to be recovered herein represent the difference between the price fixed and agreed upon by plaintiff and defendants for Kansas-Hugoton gas by the terms of four Gas Purchase Contracts, hereinafter identified, and the higher price actually paid by plaintiff to defendants of 11¢ per Mcf (14.65 psia) prescribed in a minimum gas price-fixing order promulgated by the Corporation Commission of the State of Kansas on December 2, 1953, to become effective on and after January 1, 1954. On January 20, 1958, the Kansas minimum price Order was held to be void ab initio by the Supreme Court of the United States. (*Cities Service Gas Company* v. *Corporation Commission*, 355 U. S. 391.) On April 11, 1959, the Kansas Supreme Court held that the Kansas Corporation Commission had no jurisdiction to enter the Order. (184 Kan. 540, 337 P. 2d 640, Case No. 41,284. Advance Sheets.)

[fol. 783] Plaintiff's cause of action rests upon a specific written contract with each defendant for the refund and restitution of payments made by plaintiff to defendants in excess of the agreed contract price in event the Kansas minimum price Order was declared invalid. In the alternative, plaintiff seeks restitution of the money paid under business compulsion and under the compulsion of said minimum price Order to avoid the criminal sanctions imposed by Kansas law for violation thereof.

• • • • • • •

---

[1] Plaintiff seeks a money judgment for the principal sum of $412,955.95 against The Texas Company in C.A. 671; $439,406.44 against Columbian Fuel Corporation in C.A. 670; and $35,995.19 against Columbian Fuel Corporation in C.A. 708.

[fol. 784] II.

No remedies exist under the Natural Gas Act for the recovery of a money judgment

Defendants next advance the argument that "if the Natural Gas Act had so filled the field of producer prices that it excluded the Kansas price Order even before federal regulation under the act commenced, all rights and remedies concerning producers' sales would then have been controlled by that act."

This assertion by defendants apparently proceeds from a complete misconception of the nature of this case or of rights and remedies under the Natural Gas Act, or both.

This is an action by plaintiff for a money judgment against defendants. This is not an action in which this [fol. 785] Court is being called upon to determine the reasonableness of a rate. This is not a rate-making proceeding. It is purely and simply an action to recover from defendants monies paid to them in excess of the amounts which defendants were legally and lawfully entitled to receive. Plaintiff's action, in other words, is one for reparations.

It is settled law under the Natural Gas Act that the Federal Power Commission has no reparations powers. In the first place, Section 5(a) of the Natural Gas Act only gives the Federal Power Commission jurisdiction to fix rates "to be thereafter observed * * * ." Moreover, the Supreme Court of the United States squarely held that the Federal Power Commission has no reparations powers, in *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 618. No action of any character could be brought before the Federal Power Commission which could restore monies illegally extracted from plaintiff.

The rule of law laid down in the Hope case has been settled law under the Natural Gas Act almost since its inception. Only this Court can grant the relief sought herein by plaintiff.

III.

The only lawful rate is the filed rate with the Federal Power Commission. That filed rate is the price fixed for gas in each Gas Purchase Contract here involved.

Defendants, at page 45 of their Brief, cite the opinion [fol. 786] of the Supreme Court of the United States in *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 251 (1951), wherein the Court said:

> "It [a purchaser] can claim no rate as a legal right that is other than the filed rate, whether fixed or accepted by the Commission, and not even a court can authorize commerce in a commodity on other terms."

Plaintiff fully agrees with this statement.

It is now settled law under the Natural Gas Act that the lawful filed rate is the stated contract price and that is the price fixed for gas in each Gas Purchase Contract here involved, precisely as contended by this plaintiff. Indeed, this action is one for recovery by plaintiff of the difference between the price prescribed by the void Kansas Order and that very contract rate.

Stated another way, the contract price and the lawful filed rate are one and the same.

Any lingering doubts on this subject have been squarely resolved by the United States Court of Appeals for the Tenth Circuit, the Third Circuit and the Fifth Circuit.

In *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F. 2d 860 (1958) the Court of Appeals for the Tenth Circuit held:

> "When the United States Supreme Court struck down the Kansas order there was no longer a valid order which could modify the contract rate and the contract rate was the rate effective on June 7, 1954."

[fol. 787] The Court of Appeals for the Third Circuit, in *Natural Gas Pipeline Co. of America* v. *Federal Power Commission*, 253 F. 2d 3, 7, said:

"When the United States Supreme Court found Oklahoma's action to have been unlawful and set the State Commission order aside there was no longer even the semblance of a valid law or lawful order which could modify the contract rate. The contract rate therefore under the mandate of the Supreme Court must be held to have been the rate effective on June 7, 1954."

To the same effect is the decision of the Court of Appeals for the Fifth Circuit, in *Natural Gas Pipeline Co. of America* v. *Harrington*, 246 F. 2d 915 (1957).

Once again, in *Phillips Petroleum Co.* v. *Federal Power Comm.*, 258 F. 2d 906, 918, the Court of Appeals for the Tenth Circuit observed:

"No doubt the Commission could have required each independent producer to file as a part of his rate schedule the price such producer was entitled to receive and as purchaser was obligated to pay under the provisions of the contract on June 7, 1954 and perhaps it would have been better had the Commission done so. Of course, to be effective it would have had to reflect correctly the then effective contract rate. However, the Commission did not so require and it expressly provided that the rate schedule should be the basic contract and all supplements and agreements amendatory thereof effective and applicable on or after June 7, 1954."

* * * * * * *

[fol. 788]

V.

Plaintiff's Complaint is sufficient.

No defects exists in plaintiff's Complaints as defendants seem to infer. On the contrary, plaintiff's position in this case is crystal clear.

Plaintiff seeks herein a money judgment against defendants. Its cause of action rests upon a specific written contract with each defendant for the refund of such money [fol. 789] in the event the Kansas minimum price Order was held invalid. Every operative fact necessary to establish this contract has been admitted by each defendant. Defen-

dants admit the receipt of the letter of January 21, 1954.[1] They admit the receipt and retention of voucher checks which specifically state that payment of the sums shown thereon is subject to the letter of January 21, 1954.[2] The Kansas Order has been held to be void ab initio in *Cities Service Gas Co.* v. *Corporation Commission, supra.* Plaintiff is unquestionably entitled to recover the sums sought herein from defendants on the basis of such specific contract.

In the alternative, plaintiff seeks restitution of the money paid under the compulsion of the void Kansas minimum price Order to avoid the criminal sanctions imposed by Kansas law for violation thereof.

Once again, all of the facts necessary to entitle plaintiff to recover on the theory of restitution are admitted by each defendant. Defendants admit receipt of the sums herein sought to be recovered.[3] They admit that criminal sanctions [fol. 790] would have been imposed upon plaintiff for violation of the Kansas Order.[3] Under the decision of the Court of Appeals for the Fifth Circuit in *Natural Gas Pipeline Company of America* v. *Harrington, supra,* plaintiff is entitled to recover on the theory of restitution.

The various matters set forth in defendants' Motions for Summary Judgment are nothing more than an affirmative plea by defendants that they have certain defenses and that this plaintiff has failed to plead the respective defenses of defendants set forth therein. Just how this peculiar pleading is to be regarded by this court is far from clear.

However, even assuming arguendo only that defects exist in plaintiff's complaints, such defects have been cured and

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[1] Texas Answer—par. 5 of First Defense; Columbian (C.A. 670) Answer—par. 4 of First Defense; Columbian (C.A. 708) Answer, par. 4 of First Defense.

[2] Texas Answer—par. 5 of First Defense; Columbian Answer (C.A. 670)—par. 5 of First Defense; Columbian Answer (C.A. 708)—par. 5 of First Defense.

[3] Texas Answer—par. 4 of First Defense; Columbian Answer (C.A. 670)—par. 6 of First Defense; Columbian Answer (C.A. 708)—par. 4 of First Defense.

supplied by defendants' own allegations. Defendants state that their Motions for Summary Judgment are based "upon the facts established by the pleadings, plaintiff's responses to defendants' Requests for Admissions, the affidavit attached hereto as an exhibit hereof, and such other affidavits as are filed herein pursuant to the schedule fixed by the Order entered on this Motion." If defendants contend that the Kansas minimum price Order or their respective filed [fol. 791] rates with the Federal Power Commission must necessarily be considered by this Court, both such Order and such rate filings are a matter of record in this case.

The law relating hereto is well settled.

In *Texas & N.O.R. Co.* v. *Miller*, 211 U.S. 408, 55 L. Ed. 789 (1911), the court sustained the lower court in holding defendant's allegation of a foreign statute cured the insufficiency of the complaint. The Court, p. 796, said:

> "The action was begun within the time prescribed, and what the Texas courts really held was that the omission from the complaint of an essential allegation was cured by its inclusion in the answers. In so holding they but gave the effect to a generally recognized rule under the subject. United States v. Morris, 10 Wheat. 246, 286, 6 L. Ed. 314, 323."

In *Albertson* v. *Federal Communications Commission*, 182 F. 2d 397, 401, the Court reversed the action of the Commission in sustaining an objection that an affidavit was inadequate and dismissing an application for rehearing on a permit for construction of a broadcasting station, at page 401, said:

> "Dismissing the application upon this basis disregards the long established rule that a defective pleading may be aided by an opposing pleading and that a party will not be heard to insist that his adversary has omitted to allege facts he himself has supplied. Under this rule 'a defect in a pleading, even as a matter of substance, may be aided or cured by the pleading of the adverse party, * * *.' 41 Am. Jur., Pleading, § 402, [fol. 792] and cases cited. United States v. Morris

(1825) 10 Wheat. 246, 285, 6 L. Ed. 314; Brooke v. Brooke, 1 Sid. 184, 82 Eng. Rep. 1046 (K.B. 1664)."

The United States Court of Appeals, District of Columbia, in *Christianson* v. *Gaines*, 174 F. 2d 534, said at page 536:

"In Lindsey v. Leavy, 9 Cir., 149 F. 2d 899, 902, the court stated:

"'The sufficiency of the allegations of a complaint do not determine the motion for summary judgment. Cases dealing with and construing Rule 56, Federal Rules of Civil Procedure, 28 U.S.C.A. following section 723c, clearly indicate to the contrary and if this were not the case, Rule 56 would be a nullity for it would merely duplicate the motion to dismiss.'"

The District Court for the Western District of Pennsylvania, in *Kadylak* v. *O'Brien*, 32 F. Supp. 281 (1940) held a motion to dismiss an action for failure to state a claim upon which relief could be granted was required to be denied where defendant made the motion after answering the complaint.

[fol. 793]

EXHIBIT "B" TO REPLY BRIEF OF DEFENDANT IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Defendants' Reply to Plaintiff's Supplemental Memorandum (Omitted. Printed side folio 279, page 230).

[fol. 794]

SUPREME COURT OF THE UNITED STATES

No. 914—October Term, 1959

PAN AMERICAN PETROLEUM CORPORATION, Petitioner

vs.

SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, ET AL.

ORDER ALLOWING CERTIORARI—June 13, 1960

The petition herein for a writ of certiorari to the Supreme Court of the State of Delaware is granted. The case is consolidated with Nos. 915 and 916 and a total of two hours is allowed for argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 795]

SUPREME COURT OF THE UNITED STATES

No. 915—October Term, 1959

TEXACO, INC., Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, ET AL.

ORDER ALLOWING CERTIORARI—June 13, 1960

The petition herein for a writ of certiorari to the Supreme Court of the State of Delaware is granted. The case is consolidated with Nos. 914 and 916 and a total of two hours is allowed for argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 914 [illegible]

PAN AMERICAN PETROLEUM CORPORATION, a Delaware Corporation, *Petitioner*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY; and THE HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, and CITIES SERVICE GAS COMPANY, a Delaware Corporation, *Respondents*.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

PAN AMERICAN PETROLEUM CORPORATION, a Delaware Corporation, *Petitioner*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, and CITIES SERVICE GAS COMPANY, a Delaware Corporation, *Respondents*.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Delaware in its Civil Action No. 69, 1959.

OPINIONS BELOW

The opinion of the Superior Court of Delaware in and for New Castle County in Civil Action Nos. 670,

671 and 708 (1958) is reported at 155 Atl. 2d 879 (Appendix A, pp. 1a-15a). The opinion of the Supreme Court of Delaware is reported at 158 Atl. 2d 478 (Appendix B, pp. 16a-30a).

JURISDICTION

The judgment of the Supreme Court of Delaware was made and entered on March 18, 1960 (Appendix C, pp. 31a-33a). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3). The issue of Petitioner's rights and immunities under the Natural Gas Act was raised in its Answer (R. 24), and in its Motion for Summary Judgment (Appendix D, pp. 34a-35a) in the Superior Court, and again by Petition for Writ of Prohibition in the Supreme Court of Delaware (Appendix E, pp. 37a-44a).

QUESTION PRESENTED

Respondent Cities Service Gas Company sued Petitioner in a state court to recover alleged overpayments for natural gas purchased at rates subject to the jurisdiction of the Federal Power Commission. The action was based upon a "contract" price and an alleged agreement not on file with the Commission. Petitioner moved for summary judgment contending that the action was a collateral attack upon the rate accepted, filed and made effective more than four years earlier by unprotested, final Commission action; and, further, contending that under Section 22 of the Natural Gas Act only a United States District Court had jurisdiction to entertain actions to enforce rights or liabilities created by rates filed with the Commission under that Act. The state trial court denied this motion, and the state supreme court denied a writ of

prohibition holding, first, that the state court had jurisdiction over the controversy; second, that Commission action accepting the Petitioner's filed rate and making it effective was a nullity; and, third, that the purchaser could recover on an unfiled and alleged agreement to refund.

The question presented is:

Where, after tender of a rate for filing under the Natural Gas Act, the Federal Power Commission formally decides to accept, does accept, files, and makes such rate effective, do the courts of the several states thereafter have jurisdiction:

(a) to entertain and decide a common law action which collaterally attacks the Commission decision;

(b) to declare the Commission decision making such filed rate effective, to be a nullity; and

(c) to substitute a different price for the filed rate and to enforce an unfiled agreement which changes, retroactively, the filed rate made effective by the Commission decision.

STATUTES INVOLVED

The provisions of the federal statute involved are Sections 4, 5, 16, 19, and 22 of the Natural Gas Act, 52 Stat. 822, 823, 830, 831, and 833 (1938); 15 U.S.C. 717c, 717d, 717o, 717r, and 717u (Appendix F, pp. 45a-55a). Sections 154.92 through 154.94 of the Federal Power Commission's Regulations under the Natural Gas Act (18 C.F.R. 154.92-154.94), are also involved, having the force and effect of statutes (Appendix G, pp. 56a-59a).

STATEMENT

This case involves two propositions being asserted in a large number of actions now pending in various state and federal courts — first, that rates filed, accepted, and made effective under the Natural Gas Act may be rendered void by subsequent judicial decisions in independent proceedings solely involving the validity of state pricing orders, and, second, that recoveries for differences between these effective, filed rates and various unfiled "contract prices" may be had by bringing suits upon unfiled contracts.

The filed rates in question were accepted and made effective by unprotested and now final Federal Power Commission (Commission) action in late 1954 and early 1955. The state order in question, issued in 1953, was declared invalid in 1958 by this Court. *Cities Service Gas Co.* v. *State Corporation Commission of Kansas, et al.*, 355 U.S. 391 (1958). The issues now in the courts thus revolve around the interrelation, if any, of these events occurring over a period of some five years.

As a result of the decision of this Court in *Phillips Petroleum Co.* v. *State of Wisconsin, et al.*, 347 U.S. 672 (1954), the Commission, on July 16, 1954, issued its Order No. 174 requiring producers, including Petitioner, to file with the Commission their rates as in effect on June 7, 1954, together with copies of all contracts, supplements, etc., affecting such rates.[1]

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[1] Order No. 174, subsequently replaced by Order No. 174-A, promulgated Sections of the Commission's Regulations under the Natural Gas Act now appearing in 18 C.F.R. 154.91 *et seq.* (See Appendix G, pp. 56a-59a for pertinent sections.) For brevity, these sections will be referred to as Order No. 174-A.

Pursuant to such order, Petitioner, on November 16, 1954, tendered to the Commission for filing the rate of 11¢ per Mcf at 14.65 p.s.i.a. as the rate in effect on June 7, 1954; and in connection therewith filed copies of invoice covering gas sold to Cities Service Gas Company (Cities) on June 7, 1954, at a price of 11¢, copies of the original contract, and copies of the order of the Kansas Corporation Commission prescribing a minimum price of 11¢ per Mcf (hereinafter referred to as the Kansas order) (R. 1). On November 16, 1954, Cities was notified by Petitioner of the contents of the rate filing which Petitioner was tendering. Subsequently, there being no protest or other objection by Cities to this 11¢ filing, the Commission, on January 26, 1955, duly convened and voted to accept, and thus make effective as the filed rate under the Natural Gas Act, the 11¢ rate so tendered. (Pertinent portions of the Commission's minutes are set forth in Appendix II, pp. 61a-64a). By letter order dated March 2, 1955, the Commission notified Petitioner of this action (Appendix I, pp. 70a-75a).

Cities paid Petitioner the 11¢ per Mcf rate for gas delivered from January 1, 1954, through June 30, 1957, and at a higher filed rate from July 1, 1957, through November 22, 1957.[3] However, upon invalidation of

[2] On February 1, 1957, the name of Petitioner was changed from Stanolind Oil and Gas Company to Pan American Petroleum Corporation.

[3] Petitioner's Answer (R. 24) also shows that for the period after July 1, 1957, Petitioner defended upon the basis of a filed rate of 11.0715¢ per Mcf at 14.65. For purposes of brevity in this petition, detailed facts as to that rate are omitted. It should be noted, however, that on July 1, 1957, Petitioner tendered to the Commis-

the Kansas 11c order by this Court on January 20, 1958, Cities brought the action above referred to against Petitioner, based upon allegations that on January 21, 1954, Cities advised Petitioner by letter that it would pay the price of 11c per Mcf, but was doing so involuntarily and under compulsion, and that should the Kansas order be held to be invalid it would expect to be refunded the amounts it had paid in excess of amounts which would have accrued under the original contracts. Cities also alleged that the provisions of this letter were referred to on all of the checks by which Cities paid Petitioner, which checks were accepted and cashed by Petitioner.

On the basis of these allegations, Cities sought recovery in the state court on the theory that the January 21, 1954, letter, the reference thereto on the checks, and the acceptance of the checks constituted a contract to make refund. Other common law bases for recovery were set forth in the petition, but the contract theory was accepted by the Supreme Court of Delaware and it is unnecessary to set forth here the other theories. Petitioner denied the legal existence of such a refund contract. However, for purposes of this petition, we assume, as did the court below, that such a refund contract existed.

Petitioner showed that the January 21, 1954, letter was not filed with the Commission and was not a part

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sion a notice of change of the filed rate from 11c to 11.0715¢ per Mcf. By formal Commission action, this rate was accepted, filed, and made effective as of July 1, 1957. As is true with respect to the filing in 1954 and Commission action thereon, in this instance Cities had notice of the tender, but did not protest, challenge, or otherwise object to the change of rate nor did it seek rehearing upon and judicial review of Commission action making that rate effective.

of Petitioner's rate filing. Petitioner showed the provisions of the Natural Gas Act requiring the filing of rates of natural gas companies; the implementation of that statute by Commission Order No. 174-A; Petitioner's compliance with that order by filing the requisite documents; and the acceptance of the 11¢ rate by the Commission. Petitioner further showed that Cities, although notified of the filing at the time of its tender, had raised no objection before the Commission to the filing of the 11¢ rate as the rate in effect on June 7, 1954, as required by Order No. 174-A, and took no exception to the acceptance of that rate by the Commission as the filed rate of Petitioner, and that Cities did not apply for rehearing upon or petition for review of the Commission action.

Petitioner moved for summary judgment. Petitioner asserted that Cities was precluded from maintaining any action on the purported agreement to refund, not on file with the Commission, as the rights of the parties were fixed by the Natural Gas Act; that the only legal rate was that filed with and accepted by the Commission pursuant to its regulations as such matters are within the exclusive primary jurisdiction of the Commission; that, except for review proceedings under Section 19 of the Act, the courts of the several states and of the United States are bound by the Commission's action making Petitioner's rates effective; and that the only basis for recovery by Cities would have to be for charges paid in excess of the filed rate and the adjudication of such matters is within the exclusive jurisdiction of the United States District Courts under Section 22 of the Act.

Subsequently, in consolidated companion cases[1] to the action against Petitioner, the Superior Court overruled a similar motion, and at this juncture Petitioner, together with the defendants in the consolidated cases, proceeded in the Supreme Court of Delaware with a petition for a writ of prohibition, seeking to prohibit the Superior Court from proceeding further with these actions. Cities, plaintiff in the cases below, intervened as a respondent.

The Supreme Court of Delaware, consistent with Petitioner's contentions, first concluded that:

> "The Natural Gas Act requires natural gas companies to file rate schedules with the FPC, under such regulations as the Commission may prescribe." (Appendix B, p. 18a)
>
> * * * * *
>
> "Defendants duly filed the application and documents required. These documents included copies of the contracts with Cities, copies of the Kansas Price Order, and statements showing that the price to Cities on June 7, 1954, was 11¢ per M.c.f. at the specified pressure.
>
> "As these documents were filed, the Commission duly convened and voted to accept them for filing." (Appendix B, p. 19a)

Nevertheless, the court went on to hold that a state court has jurisdiction to declare a part of a filed rate schedule to be a nullity, to determine that the legal rate is different from the rate that the Commission has accepted and filed by a final order, and to render

[1] These consolidated cases were: *Cities Service Gas Co. v. Columbian Fuel Corp.*, Civil Action Nos. 670 and 708, 1958, and *Cities Service Gas Co. v. The Texas Co.*, Civil Action No. 671, 1958.

judgment based upon an alleged contract, not on file with the Commission as a part of a rate schedule.

In so doing, the court noted the trial court's difficulty with the impact of the Natural Gas Act:

> "The trial court held that the actions were suits founded on the contracts to refund excessive payments, and not on the Natural Gas Act. Agreeing with the defendants that the only legal rate is the filed rate, it held that the contract action could be maintained if it is not inconsistent with federal law or regulation. It further held that as a matter of law the only lawful filed rate is the contract rate . . ." (Appendix B, p. 21a)

On this point, the court's construction of the Act and of the legal significance of Commission action was:

> "If under the Natural Gas Act a gas producer and a distributor may agree to fix the rate, and from time to time change it, absent any proceeding before the Commission to regulate the rate, why may they not agree that the rate to be paid shall be the contract rate if the rate imposed by a State Commission shall be held invalid? This, in effect was what the parties here agreed upon.
>
> "If so, it seems to us that the claims here are not founded upon any liability *created* by the Natural Gas Act, but upon a private contract deriving its force from state law." (Appendix B, pp. 24a-25a)

The existence of the earlier determination by the Commission as to acceptance and filing of Petitioner's rate was recognized:

> "Defendants say that in any event Cities is attempting to attack collaterally the 'filed rate',

> and that, whether right or wrong, the rate accepted for filing by the Commission, including the Kansas order, is the effective filed rate, and Cities is bound by it until it succeeds in having the Commission change it." (Appendix B, p. 29a)

But, the court declared the Commission's still outstanding decision accepting and filing that rate to be a nullity:

> "The difficulty with this argument is, once again, that the federal courts have authoritatively held that the Kansas price-fixing order was void *ab initio* because the Natural Gas Act had preempted the field. Being void the unilateral filing of the order as part of the rate schedules was a nullity." (Appendix B, p. 29a)

Having thus decided the "filed rate" had no significance, the court stated the question:

> ". . . The substantial question which emerges, in one form or another, is whether the state courts have jurisdiction to entertain the suits on the refund contracts." (Appendix B, p. 30a)

And, thereupon, it made its ultimate conclusion that "such jurisdiction" exists in the state courts, and denied the petition for writ of prohibition.

On March 17, 1960, the Supreme Court of Delaware, in considering a motion for a stay of the court's judgment, stated that: "All the members of the Court are of opinion that the application for a stay should be granted, for the reasons that the case seems to us to be an appropriate one for the granting of the writ [of certiorari] . . ." (Appendix C, p. 33a) Stay of the court's judgment, pending action in this Court upon a petition for writ of certiorari, was accordingly entered on March 18, 1960.

REASONS FOR GRANTING THE WRIT

Contrary to this Court's holding in *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951), the court below has held that there can be a legal rate different from that on file with the Commission. The impact of the holding below is obvious: no interested person can look to Commission action to determine what is the effective rate that legally may be charged and received.

Filed rates under the Act fall generally into three categories—(1) rates tendered under Section 4 which are formally accepted and made effective by Commission action without condition or suspension (which is the case here); (2) rates suspended under Section 4(e) and which are thereafter permitted to become effective upon a showing of "reasonableness"; and (3) rates determined not to be unreasonable after hearing under Section 5. Rates in the first category —those filed and made effective without condition or suspension—today form the legal rates for thousands of sales by producers to pipeline companies, and by pipeline companies to distributors. These rates are effective by Commission action, and, like other rates, remain the only legal, effective rate until changed by Commission orders, after investigation under Section 5, or after tender of a new rate by a filing company under Section 4.

The adverse effect of the decision below upon the accomplishment of the primary objectives of the Act is exemplified by the following statement of the Solicitor General:[5]

[5] Petition for Writ of Certiorari, *F. P. C.* v. *Shell Oil Co.*, No. 170, October Term, 1959, writ granted October 12, 1959.

> "The question is not only important generally in the field of administrative law but is of particular importance to the administration of the Natural Gas Act. Over 10,000 basic contracts of independent producers have already been filed with the Commission as rate schedules, and each of them potentially presents questions of contract interpretation to be resolved by the Commission—e.g., to determine whether a purported initial rate or change of rates should be accepted for filing."

The rate filing provisions of the Act were intended to secure to the gas consuming public and natural gas companies the benefits arising from definite knowledge of the exact rate which a regulated company has the right to collect and the consumer is obligated to pay. That objective can be accomplished only if the Commission determines, at the time rate filings are tendered, whether such filings should be accepted or rejected; and, if accepted, *exactly what rate is being accepted as the filed rate.*

Unless the Commission makes such determinations it cannot exercise its duties under Sections 4 and 5 of the Act. For example, if the Commission did not know what is the effective rate, it could not decide whether to suspend an increase in that rate by exercising its powers under Section 4(e), since it would not know the amount of increase above the then effective rate. Similarly, the Commission could not determine whether to inaugurate an investigation of "reasonableness" of a filed rate under Section 5(a), unless it knew the exact amount of the effective rate in question.

These Commission functions under Sections 4 and 5 are the "heart of the regulatory scheme" of the Act.

Their accomplishment would be thwarted if state courts are permitted in collateral proceedings to set aside unreviewed and, therefore, final determinations of the Commission of the exact amount of the rate it is in each instance accepting for filing.

1. The State Court Has Decided a Federal Question of Substance Not Heretofore Determined by this Court. Reduced to its bare bones, the core of this case may be stated as follows: Petitioner tendered a certain rate (11¢), higher than the contract price (8.4¢), for filing with the Commission. The 11¢ rate, without objection, was duly accepted for filing and filed by the Commission. No appeal was taken from the Commission order. Despite these facts, the purchaser alleged that by an unfiled contract, the parties agreed that should the Kansas 11¢ order be held invalid then the original 8.4¢ contract price should be the controlling price, and refund should be made accordingly. Purchaser filed suit in the state court to recover on the unfiled contract.

Assuming the existence of such a contract, as did the court below, we come then to a question of obvious importance to the orderly administration of the Act: Do the courts of the several states have jurisdiction to enforce ancillary unfiled contracts to vary retroactively rates filed with and accepted by the Commission? The court below has held that they do have.

The Supreme Court of Delaware in its decision states:

> "We are not cited to any decision of the Supreme Court of the United States authoritatively settling the question before us."

This Court has recognized in its rules that this is one of the substantial grounds for granting review of a state court decision.

We will subsequently point out that the decision of the Supreme Court of Delaware is probably not in accord with applicable decisions of this Court. It is sufficient here to note that the Delaware Court was of the opinion that it was dealing with a question not previously decided by this Court. The opinion shows further that the court recognized it was construing federal statutes, regulations of a federal commission, and federal decisions. The opinion states:

> "It is certainly true that the adjudication of these claims does entail an examination of the provisions of the Natural Gas Act, the regulations of the Commission, and the applicable federal decisions."

The court's ultimate conclusion that the actions arise under private contracts and not under federal statutes is simply the result of construing the federal statutes as permitting an unfiled private contract to take precedence over the rates filed with and accepted by the Commission.

It is this very question which it is here sought to review. With the scores of cases pending in state and federal courts to be determined by the answer to such question,[6] it is apparent that unless this Court is to give an authoritative decision construing this federal statute, there will be a wide conflict of decision and a resulting lack of uniformity in its administration. The

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[6] Some of the cases of which this Petitioner has knowledge are set forth in Appendix J, pp. 83a-85a. It is understood that literally hundreds of cases are yet to be filed.

laws of the United States will not be applied with uniformity.

2. The Decision of the State Court is Probably Not in Accord With Applicable Decisions of this Court. Although this particular statute has not been construed by this Court in a case involving identical facts, statutes so similar in form and intent have been the subject of decisions of this Court on facts so closely related to the facts here as to make it seem probable that the decision of the Delaware Court is not in accord therewith.

In *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951), this Court construed rate filing statutes administered by the Commission regulatory of the rates of power companies. Cf. Sections 205 and 206 of the Federal Power Act, 49 Stat. 851 and 852, 16 U.S.C. 824d and 824e. The provisions of the statute there involved are identical to the provisions of the Natural Gas Act with which we here deal. Both require that all rates be filed with the Commission subject to rules and regulations to be prescribed by that Commission. The *Montana-Dakota* case deals with the proposition that under these statutes the only rate which may legally be paid or received is the rate that has been filed with and accepted by the Commission. *It is authority for the rule that a court is powerless to alter in any manner a rate that has been filed and accepted by the Commission.* This is true regardless of the fact that the rate might be unlawful for any of various reasons. Under the doctrine of the *Montana-Dakota* case, lawful or not, such a rate is the only *legal* rate.

In *Montana-Dakota*, this Court found that the United States District Court below had erroneously entertained a claim that a document that had been duly accepted by the Commission as a part of a rate schedule was void and should not be considered to be an operative part of the rate schedule, and that the rate prescribed by the rate schedule as it had been duly accepted by the Commission should be changed to some other rate. This Court held that the District Court could not make such determination or entertain a claim which required it to make such a determination. This Court stated (p. 251):

> ". . . It can claim no rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the Commission, *and not even a court can authorize commerce in the commodity on other terms.*" (Emphasis supplied.)

Mr. Justice Frankfurter, joined by Mr. Justice Black, Mr. Justice Reed and Mr. Justice Douglas, though dissenting from the majority opinion, nevertheless agreed with the majority on the proposition that once a rate was filed and accepted it became the only legal rate and could not be collaterally challenged. They stated (p. 256): "Unless they are challenged, either by an interested party or on the Commission's initiative, the filed rates become the legal rates."

The decisions of this Court are numerous holding that a rate filed with the Interstate Commerce Commission is the only legal rate and cannot be collaterally attacked. Outstanding among these cases is the historic opinion written by Mr. Justice White in *Texas & Pacific Railway Co.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426 (1907). The considerations referred to

by Mr. Justice White in that decision as compelling a construction of the statutes which denied jurisdiction of a court in an action collaterally attacking a rate filed with the Interstate Commerce Commission, are equally persuasive here. The lack of uniformity which inevitably will result from exercise of such jurisdiction will defeat the public benefits sought to be accomplished by the Natural Gas Act.

The Courts of Appeals have consistently held that even though the documents comprising a rate schedule provide for automatic changes in rate, the rate accepted and filed by the Federal Power Commission may not be changed except upon further order of the Commission. Cf. *Mississippi Power & Light Co.* v. *Memphis Natural Gas Co.*, 162 F. 2d 388 (5th Cir. 1947), cert. den. 332 U.S. 770; *Cities Service Gas Producing Co.* v. *F.P.C.*, 233 F. 2d 726 (10th Cir. 1956), cert. den. 352 U.S. 911; *Signal Oil & Gas Co.* v. *F.P.C.*, 238 F. 2d 771 (3rd Cir. 1956), cert. den. 353 U.S. 923; *Bel Oil Corp.* v. *F.P.C.*, 255 F. 2d 548 (5th Cir. 1958), cert. den. 358 U.S. 804; *Continental Oil Co.* v. *F.P.C.*, 236 F. 2d 839 (5th Cir. 1956), cert. den. 352 U.S. 966; *Episcopal Theological Seminary of the Southwest, et al.* v. *F.P.C.*, 269 F. 2d 228 (D.C. Cir. 1959), cert. den. 361 U.S. 895.

Contrary to the above decisions, the court below assumed and held that a private agreement which was never filed as a part of a rate schedule nevertheless could form the basis for automatically and retroactively changing the filed rate to a lower rate never tendered to the Commission. Stated differently, under the above decisions, a rate may not change upward without Commission order and, by the same token it should logically follow that such a rate may

not change downward without Commission action. Under the Delaware decision, effective rates under the Act are subject not only to subsequent orders of the Commission, but also to orders of the courts of the several states in collateral proceedings.

If the trial court in Delaware may entertain a collateral attack upon the rate duly filed and accepted pursuant to the lawful rules and regulations of the Commission, and may declare such rate void, so may every other court of general jurisdiction in the fifty states. An authoritative determination on this question of construction of important provisions of the Natural Gas Act is sorely needed.

3. The Court Below Misinterprets United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956). The court below apparently concluded that despite the *Montana-Dakota* rule, this Court's opinion in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956), opened the door for collateral attacks upon Commission actions. It held that the filing of the Kansas 11¢ order as a part of a rate schedule constituted a unilateral filing within the meaning of *Mobile*. Based upon this reading of *Mobile*, the court held that the Commission's acceptance thereof was a nullity even though Cities did not seek a rehearing of the Commission's action or seek judicial review thereof as prescribed by Section 19 of the Act. The court below reached its decision by determining that under *Mobile* this Court's decision in *Cities Service Gas Co.* v. *State Corporation Commission of Kansas, et al.*, 355 U.S. 391 (1958), automatically made the Commission's action an absolute nullity. Under this reading of *Mobile*, any

person who questions the validity of a duly accepted rate schedule may simply ignore the provisions of Section 19 of the Act and by obtaining a judgment in a collateral proceeding automatically invalidate the Commission's action. This is inconsistent with this Court's decisions in *F.P.C.* v. *Colorado Interstate Gas Co.*, 348 U.S. 492 (1955); *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944); and *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320 (1958), and with over 75 years of administrative law.[7]

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[7] The court below apparently read this Court's opinion in *Mobile* as holding that unless a filed rate had been determined to be "reasonable" *after* formal hearing on that issue, such a filed rate was not a "legal rate" under the *Montana-Dakota* rule, and thus remained subject to review and revision by a state court in an action upon a contract. The federal Courts of Appeals have *not* construed *Mobile* so broadly. Following the *Montana-Dakota* rule and this Court's holdings on the finality of unassailed, although possibly once voidable, administrative actions, the Courts of Appeals have reasoned, after this Court's holding in *Mobile*, that where there is the tender of a unilateral rate, subject to protest and rejection under *Mobile* because the rate so tendered is contrary to a pre-existent contract, the Commission's action accepting and making effective that rate may nevertheless become final and immune from collateral attack if its action is not protested and set aside in timely fashion under the exclusive review procedures of Section 19 of the Natural Gas Act. See discussion of *Mobile* in *Tuber Gas Service Co.* v. *FPC*, 247 F. 2d 590, 593 (D.C. Cir. 1957); cert. denied, 355 U.S. 895; reasoning in *Portsmouth Gas Co.* v. *FPC*, 247 F. 2d 90 (D.C. Cir. 1957) wherein the Court of Appeals recognized the controlling importance of a timely challenge of Commission action by remanding the case for a determination of whether, as a matter of fact, the purchaser had failed to protest and thus had acquiesced in a unilateral change of an earlier contract price; the holding in *Cities Service Gas Co.* v. *FPC*, 255 F. 2d 860 (10th Cir. 1958), cert. denied, 358 U.S. 837, that Commission action accepting a tendered filing was immediately reviewable, since a person challenging validity of that Commission action would be bound by that action, in the absence of judicial review; and the reasoning to the same effect in discussion of reviewability of Com-

Petitioner submits that, contrary to the decision below, this Court did not in the *Mobile* case erase all of its prior decisions on exhaustion of administrative remedies and on exclusive primary administrative jurisdiction. In the interest of preserving the integrity of Commission action and of administrative determinations generally, the decision below should be reviewed.

4. For any Court to have Jurisdiction it would have been Necessary for the Plaintiff to have Exhausted its Administrative Remedies before the Federal Power Commission. The filing by Petitioner of the 11¢ rate was not protested by Cities, nor by anyone else. No statutory review proceeding was instituted to set aside the order of the Commission accepting the rate.[8] If a state court is permitted to exercise jurisdiction

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mission letter orders of February 1956 in *Natural Gas Pipeline Co. of America* v. *FPC*, 253 F. 2d 3 (3d Cir. 1958), cert. denied, 357 U.S. 927. Thus read, the holding in *Mobile* is compatible with the *Montana-Dakota* rule: A unilateral rate filing may be subject to protest and rejection, but once accepted and made effective without protest or timely judicial review, that filed rate, like any other, may not be attacked in collateral proceedings. The reasoning of the court below, thus, is in conflict with the reading of *Mobile* in the federal Courts of Appeals.

[8] The Delaware Courts apparently misunderstood the technical language used by the Commission in its letter orders. In accordance with practice followed in regulatory law, the Commission thereby notifies a filing company that its tendered rate has been accepted and is effective, *i.e.*, is now the legal, filed rate. At the same time, the Commission includes sentences advising that this acceptance is not to be construed as "approval," *i.e.*, a statutory finding that the tendered and filed rate is "reasonable." Under the statute, such "approval" of a filed rate as "reasonable" is deferred until after investigation under Section 4 or 5, and until such time as the filed rate is thus "approved" or "disapproved" by further order of the Commission, the "accepted," filed rate remains the only legal rate. The letter order serves as notice that

of the action against Petitioner in this case, it has a jurisdiction federal courts do not have.

This Court has held many times that where a statute provides for an administrative procedure, such procedure and the remedies thereby provided must be exhausted before a court may have jurisdiction to consider the subject.[9] The statute specifically provides for review of orders by the United States Court of Appeals, and for the filing of an application to the Commission for rehearing as a mandatory prerequisite to such review.[10] (15 U.S.C. 717r) In exact circumstances, this procedure was followed and the actions of the Commission in accepting or rejecting the tendered rate filings ultimately were reviewed under this review procedure.[11] What Cities in the

a rate, by Commission action, is such an accepted, filed rate, and thus the only rate that may be legally charged. Contrary to these familiar principles, the Delaware Courts seem to have assumed that Commission language reserving totally distinct action of "approval," means that its action accepting and filing a rate has no legal significance, and that only an "approved" rate can be considered a ~~legal, filed~~ rate under the Act.

[9] See for example: *Prentis et al.* v. *Atlantic Coast Line Co.*, 211 U.S. 210 (1908); *Yakus* v. *United States*, 321 U.S. 414 (1944); *Myers et al.* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41 (1938).

[10] As this Court noted in *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320, 336 (1958), where Congress prescribes an exclusive procedure for questioning validity of determinations of a regulatory agency, such questioning must be done in the manner prescribed by statute or not at all. This Court concluded that, "Such statutory finality need not be labeled res judicata, estoppel, collateral estoppel, waiver or the like either by Congress or the courts."

[11] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956), where the order of the Commission accepting the rate filing was set aside; *United Gas Pipe Line Co.* v. *Memphis L. G. & W. Division*, 358 U.S. 103 (1958), where the order accepting the rate filing was sustained.

present action undertakes to do is to have a state court determine the validity of the rate that was filed with and accepted by the Commission without following the statutory procedure required by the Act.

If a state court in Delaware may now exercise jurisdiction in a collateral proceeding to declare void a rate filing accepted by the Commission, there will exist two methods of testing the validity of orders of the Commission—one, the method provided in the Natural Gas Act and the other by collateral attack in the various trial courts of the land. The jurisdiction of the United States Courts of Appeals may thus be defeated.

5. This Action is One Brought to Enforce a Right Created by the Natural Gas Act and Hence, Jurisdiction of the State Court is Excluded by Section 22 of the Act. Section 22 of the Act provides that the United States District Courts have exclusive jurisdiction to entertain actions brought to enforce any liability or duty created by the Natural Gas Act.

While the Supreme Court of Delaware appears to hold that the action is not based upon the Natural Gas Act but is based upon the alleged refund agreement, the effect of its ruling is to declare the filed rate void and to substitute therefor the price resulting from the unfiled refund letter. The Supreme Court of Delaware finds that the Natural Gas Act requires the filing of these rate schedules; it finds that Petitioner duly filed the documents required by the statute and the regulations of the Commission; it finds that the statements filed showed the price to Cities on June 7, 1954, was 11c per Mcf and then finds that the Commission

accepted for filing and made effective 11c per Mcf as Petitioner's filed rate.

The Supreme Court of Delaware notes with approval the finding of the trial court that the only legal rate is the filed rate and that the contract action could be maintained only if not inconsistent with federal law or regulations. That court undertakes to avoid the loss of jurisdiction which would essentially seem to follow these conclusions, by finding that upon invalidation of the Kansas order, the alleged unfiled agreement then had the effect of voiding the rate originally filed and made effective by formal Commission action and substituting therefor the original contract price as the filed rate. The court then reasoned that this new "filed rate" and the price provided by the unfiled letter agreement being the same, a common law action could be maintained on the unfiled letter agreement.

We submit that all the court has done is to substitute a synthetic common law action for what properly should be an action based on the Natural Gas Act. If, as the Delaware Court holds, the price under the original contract somehow became the "filed rate" upon invalidation of the Kansas order, then Cities' action should have been based upon what it claimed to be the filed rate, and the appropriate federal court under Section 22 of the Natural Gas Act, and not a state court, would determine what rate had been accepted and made effective by the Commission.

In final analysis, one of two conditions must exist, and in neither can the state court be said to have jurisdiction. Either the action is to enforce the rate on file with the Commission and exclusive jurisdiction

is in the federal District Courts pursuant to Section 22 of the Act, or the action is an attempt by a state court to exercise jurisdiction over the rates of a natural gas company and such were wholly and completely taken out of the hands of the states by passage of the Natural Gas Act. This Court having twice held that the Natural Gas Act so completely occupied the field of natural gas rate regulation as to exclude state jurisdiction to fix minimum gas rates at the wellhead for conservation purposes (*Natural Gas Pipeline Co. of America* v. *Panoma Corp., et al.*, 349 U.S. 44 (1955); *Cities Service Gas Co.* v. *State Corporation Commission of Kansas, et al.*, 355 U.S. 391 (1958)), it can hardly be that state courts yet retain jurisdiction to enforce an alleged unfiled contract which has as its purpose the voiding of a rate filed with and accepted by the Commission and the substitution therefor of another and different rate not considered and accepted by the Commission.

To conclude, if the action is based upon the filed rate, Section 22 of the Act excludes state court jurisdiction; if it is not based on the filed rate, then it is an attempt by a state court to exercise jurisdiction in an area where this Court has said that the Federal Power Commission has exclusive primary jurisdiction.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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May, 1960

MAY
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 914 80

PAN AMERICAN PETROLEUM CORPORATION, a Delaware Corporation, *Petitioner*

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE In and For New Castle County, and the Honorable Andrew D. Christie, sitting as Judge of that Court, and CITIES SERVICE GAS COMPANY, a Delaware Corporation, *Respondents.*

No. 915 81

TEXACO, INC., a Delaware Corporation, *Petitioner*

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE In and For New Castle County, and the Honorable Andrew D. Christie, sitting as Judge of that Court, and CITIES SERVICE GAS COMPANY, a Delaware Corporation, *Respondents.*

APPENDICES TO PETITIONS FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

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APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

670 and 708 Civil Actions, 1958

CITIES SERVICE GAS COMPANY, A corporation, *Plaintiff*

v.

COLUMBIAN FUEL CORPORATION, A corporation, *Defendant*

---

671 Civil Action, 1958

CITIES SERVICE GAS COMPANY, A corporation, *Plaintiff*

v.

THE TEXAS COMPANY, A corporation, *Defendant*

Opinion

November 12, 1959

On defendants' motion for summary judgment. Denied.

John J. Morris, Jr. and Howard L. Williams (Morris, James, Hitchens & Williams) Attorneys for Plaintiff; Conrad C. Mount, O. R. Stites, Joe Rolston, Gordon J. Quilter and Robert R. McCracken, all of Oklahoma City, Oklahoma, of counsel.

James M. Tunnell, Jr. and Andrew B. Kirkpatrick, Jr. (Morris, Nichols, Arsht & Tunnell) Attorneys for Defendants; Clark, Carr & Ellis, of New York, New York, of counsel, for Columbia Fuel Corporation; Paul F. Schlicher and Alfred C. DeCrane Jr., both of New York, New York, of counsel, for The Texas Company.

CHRISTIE, J.:

FACTS

Plaintiff Cities operates pipelines through which it distributes natural gas in interstate commerce for resale to its customers. Defendant Columbian produces natural gas.*

In 1949 and 1951 plaintiff and defendant entered into gas purchase contracts providing for the purchase by the plaintiff over a long period of natural gas produced by defendants in the Hugoton Field of Kansas. The contracts specified the prices to be paid for the gas.

On December 2, 1953, the Corporation Commission of the State of Kansas promulgated a minimum gas price-fixing order covering natural gas produced from the Hugoton Field. The effect of this order was to require plaintiff to pay a price higher than the price agreed upon for the gas in the contracts between plaintiff and defendant.

Plaintiff Cities did not agree to the increased rate, but paid it in order to comply with the order and thus avoid criminal penalties for violation thereof. A letter from Cities to Columbian, dated January 21, 1954, reads, in part, as follows:

> "Pending final judicial determination of the said Order and beginning January 1, 1954, Cities Service Gas Company intends to pay for all gas purchased by it in the Kansas Hugoton Field in strict compliance with the terms and conditions of the said Order [the Kansas minimum price order dated December 2, 1953]. Such compliance with said Order by this Company, however, is made to avoid the penalties provided by the Kansas Statutes for a violation thereof, and the payments made to you in compliance with said Order pending its final judicial determination are to be considered and accepted by you as involuntary payments

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* The facts in Civil Action 670, 1958, against Columbian Fuel Corporation are set out because they are, in all material respects, illustrative of the facts in all three actions.

on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said Order.

"In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments."

Thereafter, upon each voucher check sent from Cities to Columbian, there was the notation that payment was made subject to the provisions of the letter dated January 21, 1954.

On June 7, 1954, the United States Supreme Court held that the Federal Power Commission had authority under the Natural Gas Act to regulate sales by producers to interstate pipelines for resale. *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

The Natural Gas Act enacted by Congress on June 21, 1938, had conferred upon the Federal Power Commission general jurisdiction to regulate the sale in interstate commerce of natural gas for resale. 15 U.S.C. §717(b). After the Natural Gas Act was enacted and before the *Phillips* decision, the FPC had consistently disclaimed jurisdiction over sales by producers at the wellhead, in the belief that these sales were not sufficiently related to interstate commerce. A few days after the *Phillips* decision, on July 16, 1954, the FPC implemented the holding by promulgating FPC Order 174 (subsequently superseded by Order 174-A on August 6, 1954, and still later amended by Order 174-B, in respect not here material), requiring all independent producers such as Columbian to file as their rate schedules "the basic contract and all supplements and agreements amendatory thereof effective and applicable on and after June 7, 1954".

In November, 1954, Columbian filed with the FPC the basic gas contracts here involved and supplements thereto, together with billing statements. Thus, the original contract rates were filed, along with billing statements reflecting the increased rates paid pursuant to Kansas minimum price order. On February 25, 1955, Columbian filed an addendum to its rate schedule specifically stating that the basis for charging the price shown on the billing statements was effectuation of the minimum prices established by the State of Kansas.

The FPC advised Columbian that this material had "been accepted for filing", but that such acceptance was not to be considered approval of the rate. Cities took no part in this filing process.

On January 20, 1958, the Supreme Court of the United States held that the minimum gas order of the Corporation Commission of Kansas was void on the ground that the order was in conflict with the Natural Gas Act which vests exclusive jurisdiction upon the FPC to regulate such sales of gas in interstate commerce. *Cities Service Gas Company* v. *Corporation Commission*, 355 U.S. 391 (1958).

After the Supreme Court held the Kansas order invalid, plaintiff resumed payments for gas purchased at the contract price instead of the price specified in the Kansas order.

Plaintiff made demand on defendants for repayment of the difference between the "contract price" and the amounts actually paid for the gas pursuant to the Kansas price order, together with lawful interest thereon. Defendants refused to make any refund, and Cities brought this action to recover the alleged overpayments. The total amount sought is $888,357.58.

Defendants filed an answer raising a number of defenses and after much discovery filed a motion for summary judgment. The grounds originally stated as a basis for defendants' motion for summary judgment were as follows:

"'1. During the period from January 1, 1954, to July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was fixed by a regulation of the State of Kansas, and plaintiff does not base its claim upon that regulation;

"2. During the period after July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was fixed by a rate filed with and accepted by the Federal Power Commission, under its regulations prescribed under the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.*, and plaintiff does not base its claim upon that filed rate; and,

"3. If the Kansas regulation, had not been in effect from January 1, 1954, to July 16, 1954, or if thereafter defendant had had no rate on file with the Federal Power Commission, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, would have been that prescribed by the Natural Gas Act, 15 U.S.C.A. §§ 717(a), *et seq.*, and plaintiff does not base its claim upon that Act."

In the course of the briefing of the motion for summary judgment, both parties agreed that, as to the period after July 16, 1954, at least no rate may be asserted as a legal right that is other than the filed rate.

Thus, it became apparent that a major issue in this case is the determination of what rate was the "filed rate" with the FPC during the period in question.

Defendants then asserted the position that this Court lacks jurisdiction to determine the "filed rate" and that it also lacks jurisdiction to determine the status of the rates prior to July 16, 1954, since under the *Phillips* decision these matters come within the provisions of the Natural Gas Act and as such must be heard in a Federal Court.

It is obvious that the jurisdiction of this Court should be determined before the merits of the defendants' motion for summary judgment are considered.

This opinion addresses itself first to the jurisdictional issue and then to the merits of defendants' motion for summary judgment.

JURISDICTION

Defendants' contention that this Court lacks jurisdiction to try and determine the dispute is based on Section 22 of the National Gas Act which provides, in pertinent part, as follows:

> "Sec. 22. The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this act or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this act or any rule, regulation, or order thereunder . . ." (15 U.S.C.A. § 717u)

Defendants maintain that after July 16, 1954, the only lawful price for the sales of natural gas by defendants to plaintiff was fixed by a rate filed with and accepted by the Federal Power Commission, that a determination of such rates by this Court would be a decision in actions at law brought to enforce a liability or duty created by the Act or a rule, regulation or order thereunder within the meaning of Section 22 of the Act.

Defendants also point to regulation § 154.21 of the Federal Power Commission which directs that no Natural Gas Company shall directly or indirectly demand, charge or collect any rate or charge . . . different from those prescribed in its effective tariff on file with the Commission.

Finally, the defendants maintain that since the whole controversy centers on what charges are required by the rates filed with the Commission under the Act, jurisdiction to determine such issue is plainly vested in the Federal Courts.

Plaintiff, on the other hand, maintains that this Court does have jurisdiction because these are common law actions in contract or for restitution, and the interpretation of the actions of the Federal Power Commission and a determination as to what constitutes the "filed rate" is not, as it is here brought before the Court, a matter over which the Federal Courts are given inclusive jurisdiction by the Natural Gas Act. Plaintiff thus maintains that the determination of a "filed rate" does not constitute the fixing of a rate.

I find defendants' contention that this Court lacks jurisdiction to be without merit. The actions here asserted are based on contracts and/or restitution and not on the Natural Gas Act. See *Cities Service Gas Company* v. *Skelly Oil Company*, 165 F. Supp. 31 (D.C. Delaware, 1958); *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667 (1950); *United Gas Pipeline Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

The plaintiff may not recover if its right to recover depends on a rate schedule which is contrary to the Natural Gas Act or any rule, regulation or order thereunder. But that is not to say that the action is based on a liability or duty created by such Act. Plaintiff merely asserts a cause of action which may not be inconsistent with federal law or regulation. If recovery is not to be inconsistent with federal law and regulation, such law and regulation must be closely studied and carefully interpreted in this Court. Still the action of this Court in interpreting the filings which have taken place will not constitute the setting of a rate and a decision of this case on its merits will not involve a decision in an action at law brought to enforce any liability or duty created by the Natural Gas Act or any rule, regulation or order thereunder.

The Natural Gas Act has provided for federal price regulation but it has not set up any machinery for adjudication of contract disputes of the type before this Court. These cases are not brought under the Act although an interpretation of what was done under the Act will be necessary to resolve the issues raised.

Since this Court has jurisdiction, it must pass upon the merits of defendants' motion for summary judgment. Such decision depends upon the status of the Kansas price order prior to July 16, 1954, and a determination of the rate filed with the FPC after that date.

Validity of Kansas Order

Defendants maintain that the Kansas minimum price order was valid until the FPC entered the field. Plaintiff argues that it is settled law that the Kansas minimum price order was void *ab initio*.

Decision on this point depends largely on an interpretation of the meaning of the United States Supreme Court decision in *Phillips Petroleum Co.* v. *Wisconsin, supra*. The problem is whether the Supreme Court there decided that federal jurisdiction was concurrent, and thus state regulation was valid until superseded by federal regulation on July 16, 1954, as defendants contend; or did it decide that federal jurisdiction was exclusive, and thus any state regulation was invalid *ab initio*, as plaintiff contends.

The first significant case in which the question arose was *Natural Gas Pipeline Co. of America* v. *Panoma Corp., et al.*, 349 U.S. 44 (1955). Natural Gas Pipeline Co. agreed to purchase gas from the Panoma Corp. at a price specified in a contract between them. Soon after the contract was made, Oklahoma enacted its minimum price order fixing a price somewhat higher than that provided for in the contract. Suit was brought by Panoma to force the purchaser Pipeline Co. to comply with the Oklahoma order.

The Oklahoma Supreme Court held the Oklahoma price order valid and required the purchaser Pipeline Co. to pay

the difference between the contract price and the order price for previous years and to pay the order price in the future. The court specifically held that the state regulatory order did not violate the commerce clause of the U. S. Constitution. *Natural Gas Pipeline Co. of America* v. *Panoma Corp., et al.*, Okla. , 271 P. 2d 354. This decision was rendered on September 15, 1953, and petitions for rehearing were denied on March 23, 1954, and on May 25, 1954. Thus, the case was decided after the passage of the Natural Gas Act, but during the period of federal disclaimer of jurisdiction over wellhead prices, and before there was any implementing federal regulation under the Act.

The *Panoma* case was appealed to the United States Supreme Court, where the Oklahoma Supreme Court decision was reversed. *Natural Gas Pipeline Co. of America* v. *Panoma Corp., et al., supra.* The Court holds that under the *Phillips* decision, the FPC had exclusive jurisdiction over wellhead prices. Defendants point out that the U. S. Supreme Court decision was handed down on April 11, 1955, and that by then federal regulation under the Natural Gas Act had begun. Defendants argue that the initiation of federal regulation was an important factor in the reversal.

Defendants' argument is based on an incorrect premise. In deciding a case, a court views facts and surrounding circumstances as they were at the time of the occurrence under litigation, not as of the time the case is finally decided. Applying this principle, the *Panoma* case dealt in part at least with the status of federal regulation as of 1953.

As before mentioned, in 1953 the Natural Gas Act lay unimplemented on the books, there being a federal disclaimer of jurisdiction over wellhead prices. This was the situation to which the U. S. Supreme Court looked when in *Panoma, supra*, it held the Oklahoma Order invalid. It thus appears that if the state regulation was invalid even in the absence of federal regulation, there never was a time

when it could be valid, i.e., it was void *ab initio*. So viewed, the *Panoma* case controls the present one on this point.

The Supreme Court in *Panoma* noted a dissent by Mr. Justice Douglas in the following language:

> "Mr. Justice Douglas being of the opinion that state regulation is permissible until the federal price regulation permitted by *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672, 98 L.Ed. 1035, 74 S.Ct. 794 is imposed, dissents."

It thus appears that the question whether state minimum gas price orders could stand until federal regulation was imposed was considered by the Supreme Court in conference and the views of Mr. Justice Douglas were rejected.

Later, when the United States Supreme Court held the Kansas minimum price order invalid in *Cities Service Gas Co.* v. *State Corporation Commission*, 355 U.S. 391 (Jan. 20, 1958), the Court, in an opinion by the whole Court, simply stated:

> "Per curiam: The judgment is reversed. *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672, 98 L. Ed. 1035, 74 S.Ct. 794; *Natural Gas Pipeline Co.* v. *Panoma Corp., et al.*, 349 U.S. 44, 99 L.Ed 866, 75 S.Ct. 576."

The absence of a dissent by Mr. Justice Douglas on this occasion seems to indicate either that his views were still unacceptable to the majority of the court and he did not see fit to urge them further, or that he had acquiesced in the majority view. In any event, the Supreme Court followed its reasoning in the *Panoma* case and held the Kansas regulation invalid from its inception.

The above analysis of the decisions of the United States Supreme Court appears to have been accepted in part at least in the Fifth Circuit in *Natural Gas Pipeline Co. of America* v. *Harrington*, 246 F. 2d 915, cert. denied 356 U.S.

957 (1958); by the Third Circuit in *Natural Gas Pipeline Co. of America v. Federal Power Commission*, 253 F. 2d 3, cert. denied 357 U.S. 927 (1958); and by the Tenth Circuit in *Cities Service Gas Co. v. Federal Power Commission*, 255 F. 2d 860, cert. denied 358 U.S. 837 (1958).

In the Fifth Circuit case, a second petition for rehearing was filed by Harrington contending that the Oklahoma Order was valid to July 16, 1954. This contention was rejected by the Court in its 253 F. 2d 231 per curiam order dated March 5, 1958, wherein the Court said:

> "Per curiam: Leave to file a second petition for rehearing is denied. *Natural Gas Pipeline Co. of America v. Panoma*, 349 U.S. 44. The notation of Mr. Justice Douglas' dissent shows that the Court considered the question presented by this second petition for rehearing."

Finally, the Supreme Courts of Oklahoma and of Kansas have decided against the proposition advanced by the defendants here. The Oklahoma Supreme Court issued an order to the Oklahoma Corporation Commission on March 20, 1958, which read, in pertinent part, as follows:

> "That Order No. 26096 of the corporation commission of the State of Oklahoma which is the subject of appeals to this Court and the Supreme Court of the United States be, and the same is, hereby reversed, set aside and held for naught in its entirety."

The Kansas Supreme Court, in *Cities Service Gas Co. v. Corporation Commission*, 184 Kan. 540, 337 P. 2d 640, cert. denied October 12, 1959, held that the Kansas minimum price order,

> "invaded the jurisdiction of the Federal Power Commission and was not within the jurisdiction of the State Corporation Commission to enter, even though the

Federal Power Comission had not exercised jurisdiction in the matter."

This Court has read with care the provocative dissenting opinion of Fatzer, P., in the Kansas case. However, I regard the opinion of the majority as better reasoned and it is now the well established view.

In my opinion, the Kansas minimum price order was void *ab initio* and never legally imposed any obligation on Cities [illegible] pay a price for gas different from that expressed in the gas purchase contracts.

As to the period before July 16, 1954, the state's price regulations were void. Since there were no "filed" rates with the FPC, there was no effective governmental price regulation in this field and as between the parties, the rates specified in their contracts would govern. The argument that the only legal rate was the "filed" rate cannot find application as to the period when there was no filed rate and no one knew that rates should be filed.

As to the period prior to July 16, 1954, defendants' motion for summary judgment is without merit.

THE LEGAL RATE AFTER JULY 16, 1954

Both parties agree that as to the period after July 16, 1954, the only legal rate is the filed rate "and not even a court can authorize commerce in a commodity on other terms." *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 251 (1951). The question then becomes what rate was legally filed? Plaintiff claims that the rate filed was the contract rate, while defendant Columbian claims that the rate filed was the rate prescribed by the Kansas minimum price order.

The question is not accurately put when we ask what was the "filed rate" since obviously the rates advocated by each party were on file with the FPC. The question really is which of the rates filed with the FPC is the legal rate binding upon the parties before this Court.

Defendants' position is that their action in tendering rate schedules to the FPC and the action of the FPC in accepting these schedules for filing made the rate prescribed by the Kansas minimum price order the legally filed rate.

The letters of acceptance written by the FPC to Columbian at the time the rates were filed tend to indicate that the FPC was of the opinion that neither the unilateral act of filing by the seller (such as defendant) nor that of the Commission in accepting the rate for filing was sufficient to increase a rate over that in the original contract. Such letters contain the following qualifying provision:

> "This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been made or may hereafter be made by the commission in any proceedings now pending or hereafter instituted by or against your company."

That a change in rate cannot be brought about by unilateral action was clearly established by the Supreme Court in *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956). The Supreme Court there explained that the original contract rate is not changed by unilateral action unless and until it is changed in a proceeding under Section 4(a) and (c) or Section 5(2) of the Act, requiring notice to the parties and an opportunity to be heard.

Since the Kansas minimum price order was void, the filing of rates involuntarily paid thereunder was no more effective than was the filing in the above cited case. See

also *Cities Service Gas Co.* v. *Federal Power Commission*, *supra*.

Defendants' contention that the filing of the rates paid under protest on account of the Kansas order made such rates the legal rate under the Natural Gas Act is without merit.

Defendants next attempt to establish that the rates required by the Kansas order were the contract rates because under a clause in the original gas purchase contract, the contract price can be changed at any time by an order such as that issued by the Kansas Commission. The clause reads:

> "This Agreement is subject to all present and future laws and valid orders, rules and regulations of any regulatory body having jurisdiction."

According to defendants, the Kansas order was in effect until federal regulation began on July 16, 1954, and determined prices up to that time.

The clause clearly states that the agreement is subject to any subsequent "*valid* order". This Court has already determined that the Kansas order was void *ab initio* and thus the clause can have no application here.

Since the Kansas order is a nullity and the filing of rates required thereunder did not change the rate set up in the original contract or establish a new legal rate, what then is the rate on file with the FPC, and thus the legal rate for the period prior to July 16, 1954?

The Federal Power Commission's position on this matter, as stated in its brief to the Circuit Court in *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F. 2d 860, cert. denied 358 U.S. 837 (1958), was that:

> "Since the Kansas order has been declared invalid on the date of filing, it was never a part of the filed rate, and Cities Service is not barred by the filed rate

rate from recovering any payments made by it in excess of the contract price."

and further that the:

"rate as we have seen is the 6¢ contract rate in view of the invalidity of the Kansas order, not the 11¢ rate reflected in the billing statements."

The Circuit Court accepted the FPC position in the *Cities Service* case, *supra*, held:

"When the United States Supreme Court struck down the Kansas order there was no longer a valid order which could modify the contract rate and the contract rate was the rate effective . . ."

To the same effect is the decision of the Fifth Circuit in *Natural Gas Pipeline Co. of America* v. *Haxrington*, *supra*, and of the Third Circuit in *Natural Gas Pipeline Co. of America* v. *Federal Power Commission*, supra.

The Court holds, as a matter of law, that implicit in the acceptance by the Commission of the Kansas minimum price order was the validity of that order. If said order were valid, the rate prescribed therein would indeed constitute the filed rate of defendants with the Federal Power Commission. However, since the Kansas order was void, the only lawful filed rate is the contract rate, unaffected by the Kansas order.

Defendants' motion for summary judgment is denied.

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF DELAWARE

COLUMBIAN FUEL CORPORATION, a Delaware corporation, TEXACO, INC., a Delaware corporation, and PAN AMERICAN PETROLEUM CORPORATION, a Delaware corporation, *Petitioners*

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, *Respondents*

and

CITIES SERVICE GAS COMPANY, a Delaware corporation, *Intervening Respondents*

(February 25, 1960)

No. 69, 1959

SOUTHERLAND, C. J., and WOLCOTT and BRAMHALL, J. J., sitting.

Petition for writ of prohibition to the Superior Court of New Castle County. Petition denied.

James M. Tunnell, Jr., of Morris, Nichols, Arsht & Tunnell, of Wilmington, Attorney for Petitioners.

Clark, Carr & Ellis, of New York City, for Petitioner Columbian Fuel Corporation; Paul F. Schlicher and Alfred C. De Crane, Jr., of New York City for Petitioner Texaco, Inc.; W. W. Heard of Tulsa, Oklahoma, for Petitioner Pan American Petroleum Corporation.

Howard L. Williams of Morris, James, Hitchens & Williams, of Wilmington, and C. C. Mount, of Oklahoma City, and Jack Werner, of Washington, D. C., for Intervening Respondents Cities Service Gas Company.

Edmund D. Lyons of Morris, James, Hitchens & Williams, of Wilmington, and John T. Grant, of Omaha, Ne-

braska, for the Northern Natural Gas Company, Amicus Curiae.

SOUTHERLAND, C. J.:

The petition attacks the jurisdiction of the court below to entertain four actions at law brought by Cities Service Company against three defendants, the petitioners above named. In these actions Cities seeks to recover from defendants large sums of money representing part of the payments made by Cities to defendants for natural gas between January 1, 1954 and late 1957.

The factual background of the claims is as follows:

Cities is a natural gas pipeline company. It transports natural gas from Hugoton Field in Kansas, in interstate commerce, to local distributing companies. Defendants are producers of natural gas from that field.

In 1949, 1950 and 1951 Cities and the defendants entered into contracts for the sale of gas by defendants to Cities at prices less than eleven cents a thousand cubic feet, measured on a pressure base of 14.65 pounds per square inch absolute. Since the execution of these contracts defendants have supplied Cities with gas from the Hugoton Field.

Prior to the execution of these contracts Congress had adopted the Natural Gas Act. Act of June 21, 1938, 15 U.S.C.A. § 717. The Federal Power Commission was empowered to regulate the sale in interstate commerce of natural gas for resale. Because of an exemption in the act the Federal Power Commission thereafter disclaimed jurisdiction over sales by producers, such as defendants.

On December 2, 1953, the Corporation Commission of the State of Kansas promulgated an order, effective, January 1, 1954, fixing a minimum price of not less than 11¢ per M.c.f., measured on a pressure base of 14.65 p.s.i.a., to be paid for natural gas produced by defendants from the Hugoton Field. Cities and others filed suit in the Kansas courts for a judicial review of the order.

On January 21, 1954, Cities wrote a letter to each of the defendants with respect to the Kansas Commission order. After stating that Cities had filed suit to obtain judicial review of the order, Cities notified the defendants that it intended to pay for gas purchased from the Hugoton Field in strict compliance with the terms of the order; that such compliance was made to avoid the penalties provided by the Kansas statutes for violation; and that payments to the defendants are to be considered and accepted by you as involuntary payments on our part, without prejudice to our rights in said litigation * * *". Cities added:

> "In the event the said Order is judically modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas produced during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments."

Each voucher check sent to each of the defendants in payment of gas purchased during the period involved in these suits contained a notation that payment was made subject to the provisions of the letter of January 21, 1954. Each defendant accepted its checks and cashed them, and made no objection to the conditions on which they were tendered.

For the sake of convenience we shall refer to these documents as "the refund contracts", recognizing that the defendants do not concede their legal effect.

On June 7, 1954, the Supreme Court of the United States, reversing a decision of the Federal Power Commission, held that rates of "all wholesales of natural gas in interstate commerce," including rates of producers, were subject to the Commission's jurisdiction. *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 74 S.Ct. 794.

The Natural Gas Act requires natural gas companies to file rate schedules with the FPC, under such regulations as the Commission may prescribe. § 717c(c).

On July 16, 1954, the Commission issued order No. 174, later replacing it or supplementing it with orders No. 174-A and No. 174-B. These orders dealt with the regulation of "independent producers" under the Natural Gas Act. These producers were required to apply for certificates of public convenience and necessity, and were directed to file with the Commission "rate schedules as defined in Section 154.93 hereof, setting forth the terms and conditions of service and all rates and charges for such transportation or sale effective on June 7, 1954." By § 154.93 a rate schedule was defined as "the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954."

Defendants duly filed the application and documents required. These documents included copies of the contracts with Cities, copies of the Kansas Price Order, and statements showing that the price to Cities on June 7, 1954, was 11¢ per M.c.f. at the specified pressure.

As these documents were filed, the Commission duly convened and voted to accept them for filing. The Commission so notified each defendant that its schedules had been accepted without constituting the acceptance as approval of any rate or charges, and without prejudice to any orders of the Commission that might affect the company so filing.

In 1956 the Supreme Court of Kansas sustained the validity of the Kansas Corporation Commission's order of December 2, 1953 (180 Kans. 454, 304 P. 2d 528), but on appeal the Supreme Court of the United States on January 20, 1958 reversed (355 U.S. 391, 78 S.Ct. 381), citing the *Phillips* decision and the decision in *Natural Gas Pipe Line Co.* v. *Panoma Corporation* (1955), 349 U.S. 44, 75 S.Ct. 578.

In the Panoma case the Supreme Court had held in 1955 that a similar price fixing order of the Oklahoma Corporation was void. From the dissenting opinion of Mr. Justice Douglas, it seems clear that the order was held void *ab initio*.

Applying these decisions the Supreme Court of Kansas on April 11, 1959, held that the Kansas Commission's order was void *ab initio*. 184 Kan. 540, 337 P. 2d 640.

In 1958 Cities filed the four suits which are now before us. The complaints are substantially the same. They set forth the original gas contracts between the parties; the facts concerning the issuance of the Kansas price-fixing order; the refund contracts; the increased prices for gas effected by the Kansas order; and the invalidation of that order by the Supreme Court of the United States.

By reason of these facts, it is alleged that defendants agreed in writing to refund plaintiff the over-payments; that such payments were made under compulsion; that defendants are justly indebted to plaintiff in the amount of such overpayments; and that to permit defendants to retain such overpayments would constitute unjust enrichment.

The answers deny the legal effect of the refund contracts and deny that the payments were made involuntarily. The answers further set forth the facts with respect to the assumption of jurisdiction over defendants' rates of the Federal Power Commission and the filing of defendants' rate schedules, and their acceptance by the Commission. The answers further allege that the filed rate has never been decreased; that the exclusive means authorized by the Natural Gas Act and the rules of the Commission have never been utilized to contest or challenge the rate schedules; and that the rate schedules have at all times remained the legally effective rate for the sales of gas by defendants to Cities.

Subsequently the parties supplemented the record by discovery proceedings and by affidavit, and the defendants moved for summary judgment. The grounds for the motion were that the only lawful price for the sales of natural gas during the period prior to July 16, 1954, was that fixed by the Kansas order; and that during the period after July

16, 1954, the only lawful price was that fixed by the rate filed and accepted by the Commission.

Defendants' contention in support of this motion was stated in the alternative: If Cities was seeking to recover payments in excess of the contract price, it had no case, since the only lawful price for gas sold by them during the periods in question was fixed by the Kansas price order and by the rate schedules filed by the Commission. If, on the other hand, the Natural Gas Act excluded the Kansas order, then Cities was seeking to recover payments allegedly in excess of natural gas rates, in which event jurisdiction to determine the claims was vested exclusively in the federal courts by the express provisions of the Natural Gas Act.

The trial court held that the actions were suits founded on the contracts to refund excessive payments, and not on the Natural Gas Act. Agreeing with the defendants that the only legal rate is the filed rate, it held that the contract action could be maintained if it is not inconsistent with federal law or regulation. It further held that as a matter of law the only lawful filed rate is the contract rate—a ruling that the defendants assail as unnecessary because they had not tendered such an issue.

Defendants bring these rulings before us by way of a petition for a writ of prohibition.

Basic to defendants' case (in whatever form developed) is the question of jurisdiction. Has a state court jurisdiction to entertain the actions?

Section 22 of the Natural Gas Act (15 U.S.C.A. § 717u) provided in part:

> "The district Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this act or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law,

brought to enforce any liability or duty created by, or to enjoin any violation of, this act or any rule, regulation, or order thereunder."

Does Cities seek to enforce a "liability or duty created by" the Act? In form, at least, its action is clearly one based on the refund contracts—not upon the contracts filed with the Commission, but upon the refund contracts by which the defendants agreed to make restitution.

But the defendants insist that, whatever the form of these actions, they are in effect actions for charges allegedly in excess of a filed rate, and therefore seek to enforce a liability created by the Act. Defendants do not point to any provisions of the Act specifically authorizing suits to recover overpayments of gas rates, such as found in the Interstate Commerce Act. Their argument runs as follows:

The filed rate, defendants say, is the only lawful rate; by federal law no deviation from it is permitted; if more or less than the filed rate is paid, such payment is a violation of federal law, and a suit to redress the wrong may be brought only in the federal courts. Hence (defendants seem to say) the refund contracts have no validity in themselves as a ground for a common law action in the state courts; any rights that Cities may have in its present situation flow from the rate provisions of the Natural Gas Act.

This leads to the question: To what extent does the Act impair the validity of private contracts relating to gas rates?

It is authoritatively settled that the Natural Gas Act, unlike the Interstate Commerce Act, does not abrogate private rate contracts as such. *United Gas Pipe Line Company* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 76 S.Ct. 373. In that case the gas contract between United and Mobile had been duly filed with the FPC. Later Mobile attempted to change the rate fixed in the contract by filing

a new rate schedule. The Commission accepted it, holding that it would become effective unless after investigation the Commission should determine it to be unlawful. The Supreme Court held that the rate could not be so changed by unilateral action. The Court said:

> "In construing the Act, we should bear in mind that it evinces no purpose to abrogate private rate contracts as such. To the contrary, by requiring contracts to be filed with the Commission, the Act expressly recognizes that rates to particular customers may be set by individual contracts. In this respect, the Act is in marked contrast to the Interstate Commerce Act, which in effect precludes private rate agreements by its requirement that the rates to all shippers be uniform, a requirement which made unnecessary any provision for filing contracts."

Referring to the provisions of Section 4 and 5 of the Act, relating to changes in rates and to the regulatory powers of the Commission, the Court also said:

> "These sections are simply parts of a single statutory scheme under which all rates are established initially by the natural gas companies, by contract or otherwise, and all rates are subject to being modified by the Commission upon a finding that they are unlawful. The Act merely defines the review powers of the Commission and imposes such duties on natural gas companies as are necessary to effectuate those powers; it purports neither to grant nor to define the initial rate-setting powers of natural gas companies."

In the cases at bar the gas purchase contracts were duly filed, along with the Kansas price-fixing order. Cities never agreed to the increased rate set by that order, so that the filing of the order by the defendants was not an agreed change in the rate.

Moreover, it has been authoritatively settled that the Kansas order was void *ab initio*, as above set forth. And the federal courts have also held that the effect of that holding was to leave the contract rate as the only lawful rate. In *Natural Gas Pipeline Company v. Federal Power Commission*, (3rd CCA) 253 F. 2d 7, the distributor assailed an order of the FPC directing the filing of an increased rate based on a price-fixing order of the Oklahoma Corporation Commission, later held invalid by the Supreme Court. In reviewing the Commission's order the Third Circuit Court of Appeals said:

> "The contract rate could only be changed, then, (unless the parties consented) after a hearing by the Commission as to its lawfulness unless, as set out in the agreement itself, a valid law and lawful orders of regulatory bodies having jurisdiction over the parties affected it. It was expressly because of these elements that Natural, after the Oklahoma Commission had established a minimum rate and while its lawfulness was being litigated, paid the state-fixed purchase price under protest. When the United States Supreme Court found Oklahoma's action to have been unlawful and set the state commission order aside, there was no longer even the semblance of a valid law, or lawful order which would modify the contract rate. The contract rate, therefore, under the mandate of the Supreme Court must be held to have been the rate effective on June 7, 1954."

A similar holding is found in *Cities Service Gas Co. v. Federal Power Commission* (10th CCA), 255 F. 2d 860.

If under the Natural Gas Act a gas producer and a distributor may agree to fix the rate, and from time to time to change it, absent any proceeding before the Commission to regulate the rate, why may they not agree that the rate to be paid shall be the contract rate if the rate imposed by

a State Commission shall be held invalid? This, in effect, was what the parties here agreed upon.

If so, it seems to us that the claims here are not founded upon any liability *created* by the Natural Gas Act, but upon a private contract deriving its force from state law.

It is certainly true that the adjudication of these claims does entail an examination of the provisions of the Natural Gas Act, the regulations of the Commission, and the applicable federal decisions. But these have been brought into the cases by way of defense to complaints which, on their face, are based on nothing more than contracts to refund amounts measured by the contract or "filed" rate and the rate fixed by the Kansas order. The general rule is that in such a case the plaintiff's suit is not one arising under federal law. *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 70 S.Ct. 876. Cases involving patents supply familiar examples of this principle. See annotation in 167 ALR p. 1114.

There is no issue here of the reasonableness of the rate, nor any attempt to "adjudicate" a proper rate, as the defendants argue.

We are not cited to any decision of the Supreme Court of the United States authoritatively settling the question before us. There are, however, three decisions of the federal district courts involving suits brought in the state courts to recover excess payments of gas rates made under circumstances similar to those in the cases at bar. In each case the defendants attempted to remove the case to the federal court. In *Cities Service Gas Co.* v. *Skelly Oil Co.*, (D.C. Del. 1958), 165 F. Supp. 31, Judge Layton held that the suit was not one founded upon the Natural Gas Act, but a contract action based upon letters interchanged by the parties. He added:

> "Now, it is conceded that in order to determine the exact amounts due, as well as other relevant questions, a construction of the Natural Gas Act and of the Com-

> mission Rules may have to be resorted to. But as said in the Winsor case, 'Nor, * * * is the fact that a federal law may or will be drawn into construction during the course of the litigation sufficient to support jurisdiction in a federal court'."

To the same effect is *Northern Natural Gas Co.* v. *Cities Service Oil Co.*, decided by the United States District Court of Iowa, June 30, 1959, and *Pan American Petroleum Corporation* v. *Cities Service Gas Co.*, decided by the District Court of Kansas. (Both opinions are unreported.) In the latter case, as in these cases, the Kansas Corporation Commission price-order had been filed with the Commission. The Court, citing the decision of the Supreme Court respecting the effect of private contracts fixing initial rates, noted that the Commission had taken no action to change the contract rate. The court also held that the Kansas Commission had no power to modify the terms of the original agreement, and further said:

> "In view of these decisions, it is clear that there is no federal question presented relative to the order of the Kansas Corporation Commission raising the contract price to 11¢, and the unilateral rate change by the Federal Power Commission. Since the law is settled, there is no federal question."

Defendants say that these are removal cases, merely directing remand, and therefore not affirmative holdings sustaining the jurisdiction of the state courts. This distinction is not convincing. At the moment, they furnish a persuasive guide to a state court confronted with a novel question not authoritatively settled by the Supreme Court. We think that we should follow their reasoning.

In support of their contention that the Natural Gas Act creates the liability in the cases before us, defendants cite decisions arising under the Interstate Commerce Act. In

view of the decision in the Mobile case, we think them inapplicable.

The conclusion that the Natural Gas Act is not inconsistent with private contracts for restitution of overpayments in cases such as those before us finds support in the case of *Natural Gas Pipeline Co.* v. *Harrington* (5th C.C.A., 1957), 246 F. 2d 915. That decision sustained an action for restitution of the difference between the contract rate and the price paid by Natural in compliance with an order of the Oklahoma Corporation Commission that was later declared invalid.

The Court said that any price in excess of the contract rate was "contrary to the spirit, if not the letter" of the Natural Gas Act; but it is clear to us that the Court did not hold that liability in such a suit was created by the Act; on the contrary, it clearly recognized the action as one founded on common law principles of restitution.

Defendants say that this case is not in point, because the gas contract and Oklahoma price order had not been filed with the Commission; but the Court of Appeals held that this failure did not prevent the jurisdiction of the Commission from attaching, and that the contract rate became the only lawful rate until changed by order of the Commission. On the latter point, see also *Interstate Natural Gas Co.* v. *Southern California Gas Co.*, 209 F. 2d 380 (9th CCA., 1953).

Defendants point to 4(a) of the Act, and to § 154.21 of the Commission's regulations, embodying the requirement for reasonable rates and the prohibition against unreasonable rates. The argument seems to be that these provisions create a liability for repayment of the amounts of excessive charges. This argument is, we think, foreclosed by the decision in *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 71 S.Ct. 692, and *T. I. M. E. Inc.* v. *United States*, 359 U.S. 464, 79 S.Ct. 904. The latter case involved the Motor Carrier Act of 1935; the

former the Natural Gas Act. In the *Montana-Dakota* case the Court, referring to the statutory rerequirement of reasonableness, said:

> "But the prescription of the Statute is a standard for the Commission to apply, and independently of Commission action, creates no right which courts may enforce."

This holding was reaffirmed in the *T. I. M. E.* case.

One of the defendants urges that the *T. I. M. E.* case, which holds that there is no common law right of action for unreasonable rates under the Motor Carrier Act, is applicable to the cases before us. Since these actions are based on private contracts, we do not think that the holding in the T. I. M. E. case applies.

The *Montana-Dakota* case, cited above, is relied on by defendants as authority for the general proposition that "the right to a reasonable rate is the right to the rate which the Commission files or fixes, and that, except for review of the Commission's orders, the courts can assume no right to a different one." In that case the Supreme Court considered a complaint alleging fraud in preventing plaintiff from pursuing before the Federal Power Commission its remedy for a reasonable rate. The case, as we read it, holds that, on an issue of the reasonableness of the rate, the jurisdiction of the Commission is exclusive. But here, as above noted, there is no issue of the reasonableness of the filed rate.

Defendants cite our own decisions refusing in corporate election proceedings to adjudicate claimed violations of the proxy rules of the Securities and Exchange Commission in respect to the solicitation of stock proxies.

Investment Associates Inc. v. *Standard Power & Light Corporation*, 29 Del. Ch. 225, A. 2d , affirmed 29 Del. Ch. 593, A. 2d , was such a case. The Vice Chancellor first held that exclusive jurisdiction to determine the validity of the proxy was vested in the federal

courts, and that in any event, because of the need of uniformity in applying the act, the state courts would not entertain such a challenge. The decision was affirmed. It was later followed in *American Hardware Corporation* v. *Savage Arms Corporation*, Del. , 136 A. 2d 690.

In those cases we were asked to adjudicate a violation of regulations under the Securities act; here we are not asked to adjudicate any violation of the Natural Gas Act, or, in our opinion, to enforce a liability created by that Act.

Defendants argue that Cities had a remedy before the Commission. Cities should, it is said, have attacked directly the filing of the Kansas price order as a part of the rate schedules, as it did in the *Magnolia* case. *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F. 2d 860.

The rule requiring the exhaustion of administrative remedies would certainly be applicable to a suit in the federal court attacking the reasonableness of the rate, but we think it inapplicable here, since no attack is made upon the "filed rate", which the federal courts have held to be the gas contract rate.

Defendants say that in any event Cities in attempting to attack collaterally the "filed rate", and that, whether right or wrong, the rate accepted for filing by the Commission, including the Kansas order, is the effective filed rate, and Cities is bound by it until it succeeds in having the Commission change it.

The difficulty with this argument is, once again, that the federal courts have authoritatively held that the Kansas price-fixing order was void *ab initio* because the Natural Gas Act had pre-empted the field. Being void the unilateral filing of the order as part of the rate schedules was a nullity. This is not our adjudication; it is the adjudication of the federal courts.

Defendants cite *Federal Power Commission* v. *Interstate Natural Gas Co.*, 336 U.S. 577, S.Ct. , as holding

that the claims for refunds from regulated gas companies are determinable solely with reference to federal law. The case concerned a fund accumulated during litigation over Interstate's rates, which had been reduced by order of the Commission. The issue was whether the fund should go solely to four pipeline companies or (at least in part) to their customers who were the ultimate consumers of the gas. The Supreme Court held that the distribution of the fund was governed by federal law and that the lower federal courts should determine the distribution between those entitled. The case does not seem to us to touch the point before us.

It is true that if Cities should recover the money for which it sues the distribution of the fund would be subject to the orders of the Federal Power Commission. See 15 F.P.C. 1448, 1453. But we do not understand the defendants to contend that the Commission is vested with power to enforce refund contracts of the kind here sued on.

Defendants seek to build an argument upon the general propositon that the Natural Gas Act leaves no room for common law obligations to do that which the Act itself requires.

This argument seems to us to assume the very point in issue, that is whether the Act itself creates the liability here sued on. This is the basic question in the case.

One final observation must be made. A great deal of argument in the defendants' briefs is directed to an attempted limitation of the issues before the Superior Court and the issues before this Court. Most of this argument seems to us to miss the point. The substantial question which emerges, in one form or another, is whether the state courts have jurisdiction to entertain the suits on the refund contracts.

For the reasons above stated, we are of opinion that such jurisdiction exists.

The petiton for a writ of prohibition is denied.

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF DELAWARE

COLUMBIAN FUEL CORPORATION, a Delaware corporation, et al., *Petitioners*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, et al., *Respondents*,

and

CITIES SERVICE GAS COMPANY, a Delaware corporation, *Intervening Respondent*.

No. 69, 1959

Final Judgment

THIS 18th day of March, 1960,

THE COURT having filed its opinion, dated February 25, 1960, [illegible] the petition for a writ of prohibition herein, and petitioners having filed a motion, dated March 4, 1960, asking that the operation, execution, and enforcement of its judgment on that opinion be stayed in order to permit application for a writ of certiorari to be made to the Supreme Court of the United States,

IT IS HEREBY ORDERED and ADJUDGED:

1. That the petition for a writ of prohibition is dismissed;

2. That the stay of all further proceedings in the Superior Court of the State of Delaware in and for New Castle County, in Civil Actions 670, 671, 708 and 722, 1958, contained in the order of this Court herein dated November 17, 1959, is vacated;

3. That the clerk of this Court shall return to the Prothonotary of the Superior Court of the State of Delaware in and for New Castle County the original records in Civil Actions 670, 671, 708 and 722, 1958, in that

Superior Court, together with a certified copy of this order; and,

4. That the operation, execution and enforcement of paragraphs 1, 2, and 3 hereof are stayed in their entirety for a period of thirty days from the date hereof; and, as to any of the petitioners which shall have applied to the Supreme Court of the United States for a writ of certiorari herein within that time, the operation, execution and enforcement of those paragraphs are further stayed in their entirety as to those petitioners until the entry of a final order of the Supreme Court of the United States in any certiorari proceedings.

/s/ CLARENCE A. SOUTHERLAND
Chief Justice
/s/ DANIEL F. WOLCOTT
Justice
/s/ HOWARD W. BRAMHALL
Justice

Approved as to form:
ANDREW B. KIRKPATRICK, JR.
Attorney for petitioners

.....
Attorney for intervening respondent

SUPREME COURT OF DELAWARE

Clarence A. Southerland, Chief Justice

Court House
Wilmington, Delaware

March 17, 1960

Re: Columbia Fuel Corp., et al. v. Cities Service Co.
No. 69, 1959

James M. Tunnell, Jr., Esquire
Andrew B. Kirkpatrick, Jr., Esquire

Morris, Nichols, Arsht & Tunnell
350 DuPont Building
Wilmington, Delaware
Howard L. Williams, Esquire
Henry N. Herndon, Jr., Esquire
Morris, James, Hitchens & Williams
Bank of Delaware Building
Wilmington, Delaware

Dear Sirs:

The Court has considered the motion for a stay in the above case and the memoranda submitted in connection therewith.

All the members of the Court are of opinion that the application for a stay should be granted, for the reason that the case seems to us to be an appropriate one for the granting of the writ and that, in any event, the balance of convenience is in favor of the stay.

The Court is of opinion that a stay of thirty (30) days is sufficient.

Accordingly, the Court has signed the order in the form submitted by counsel for the petitioners with two changes:

In line 3 of page 4 the words "forty-five" have been deleted and the word "thirty" substituted therefor. In line 4 of paragraph 4 the word "shall" has been inserted after the word "which."

The order is effective as of March 18, 1960.

Very truly yours,

/s/ C. A. Southerland

APPENDIX D

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 722

1958

CITIES SERVICE GAS COMPANY, a corporation, *Plaintiff*

v.

PAN AMERICAN PETROLEUM CORPORATION, a corporation, *Defendant*

Defendant's Motion for Summary Judgment

Defendant hereby moves for summary judgment on plaintiff's claim.

The grounds for this Motion for Summary Judgment are that:

1. During the period from January 1, 1954, to July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was either (a) fixed by an order of the State of Kansas, or (b) if the Kansas order was inapplicable during such period of time, then the only lawful price for such sales was prescribed by the Natural Gas Act (15 U.S.C.A. §§ 717(a) *et seq.*), and plaintiff does not base its claim upon either that Order or that Act; and,

2. During the period after July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was fixed by a rate filed with and accepted by the Federal Power Commission, under its regulations prescribed under the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.*, and plaintiff does not base its claim upon that filed rate.

This Motion for Summary Judgment is based upon the facts established by the pleadings and by plaintiff's an-

swers to defendant's interrogatories and plaintiff's responses to defendant's request for admissions to be filed in support hereof, and such other affidavits as are filed herein pursuant to the schedule fixed by the order entered herein on May 8, 1959.

MORRIS, NICHOLS, ARSHT & TUNNELL
JAMES M. TUNNELL, JR.
James M. Tunnell, Jr.
3000 duPont Building
Wilmington, Delaware
Attorneys for Defendant

June 8, 1959

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671

1958

CITIES SERVICE GAS COMPANY, a corporation, *Plaintiff*

v.

THE TEXAS COMPANY, a corporation, *Defendant*

Defendant's Motion for Summary Judgment

Defendant hereby moves for summary judgment on plaintiff's claim.

The grounds for this Motion for Summary Judgment are that:

1. During the period from January 1, 1954, to July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was either (a) fixed by an order of the State of Kansas, or (b) if the Kansas order was inapplicable during such period of time, then the only lawful price for such sales was prescribed by the Natural Gas Act (15

U.S.C.A. §§ 717(a) *et seq.*), and plaintiff does not base its claim upon either that Order or that Act; and,

2. During the period after July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was fixed by a rate filed with and accepted by the Federal Power Commission, under its regulations prescribed under the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.*, and plaintiff does not base its claim upon that filed rate.

This Motion for Summary Judgment is based upon the facts established by the pleadings and by plaintiff's answers to defendant's interrogatories and plaintiff's responses to defendant's request for admissions to be filed in support hereof, and such other affidavits as are filed herein pursuant to the schedule fixed by the order entered herein on May 8, 1959.

MORRIS, NICHOLS, ARSHT & TUNNELL

/s JAMES M. TUNNELL, JR.

James M. Tunnell, Jr.
3000 duPont Building
Wilmington, Delaware
Attorneys for Defendant

January 30, 1959.

APPENDIX E

TO THE HONORABLE THE JUSTICES OF THE SUPREME COURT OF THE STATE OF DELAWARE:

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 1959

COLUMBIAN FUEL CORPORATION, a Delaware corporation, TEXACO, INC., a Delaware corporation,

and

PAN AMERICAN PETROLEUM CORPORATION, a Delaware corporation, *Petitioners*

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and the HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, *Respondents*

Petition for Writ of Prohibition

Petitioners Columbian Fuel Corporation, Texaco, Inc., and Pan American Petroleum Corporation, respectfully petition this Court for the issuance of a writ prohibiting the respondents, the Superior Court of the State of Delaware in and for New Castle County, and the Honorable Andrew D. Christie, sitting as a judge of that Court, from proceeding further in the following civil actions:

C. A. 670, 1958

Cities Service Gas Company, a corporation, Plaintiff,

v.

Columbian Fuel Corporation, a corporation, Defendant

C. A. 671, 1958

Cities Service Gas Company, a corporation, Plaintiff,

v.

The Texas Company, a corporation, Defendant

C. A. 708, 1958

Cities Service Gas Company, a corporation, Plaintiff,

v.

Columbian Fuel Corporation, a corporation, Defendant

C. A. 722, 1958

Cities Service Gas Company, a corporation, Plaintiff,

v.

Pan American Petroleum Corporation, a corporation, Defendant

The basis for this petition is that a state court has no jurisdiction of the subject matter of these civil actions. In support hereof petitioners respectfully represent:

1. The plaintiff in Civil Actions 670, 671, 708 and 722, 1958, in the Superior Court of the State of Delaware in and for New Castle County (hereinafter "Civil Actions 670, 671, 708, and 722"), is Cities Service Gas Company, a Delaware corporation (hereinafter referred to as "plaintiff"). Petitioner Columbian Fuel Corporation, a Delaware corporation, is the defendant in Civil Actions 670 and 708, petitioner Texaco, Inc., a Delaware corporation (formerly "The Texas Company"), is the defendant in Civil Action 671, and petitioner Pan American Petroleum Corporation, a Delaware corporation, is the defendant in Civil Action 722 (each is sometimes hereinafter referred to as "defendant").

2. Plaintiff is an interstate pipeline company which purchases natural gas where produced, transports it inter-

state to areas of consumption, and there resells it to local distributing companies. Defendants produce natural gas and sell it to plaintiff for use in its pipeline system.

3. By Civil Actions 670, 671, 708, and 722, plaintiff seeks to recover what it avers were overpayments made by it to defendants for natural gas, $439,406.44 being the amount demanded in Civil Action 670, $412,955.95 in Civil Action 671, $35,995.19 in Civil Action 708, and $10,324,468.67 in Civil Action 722.

In its complaints plaintiff in effect avers that it was required during the period in question to make the alleged overpayments to the defendants because of a state administrative order, fixing a minimum price for sales of natural gas, which plaintiff alleges has since been determined by the Supreme Court of the United States to be invalid because excluded by a federal statute, the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.* Plaintiff concludes its complaints by alleging that each defendant agreed to make refunds, that the payments had been made involuntarily by plaintiff, and that they constituted an unjust enrichment of each defendant.

In its answer each defendant denied these allegations of the complaints and alleged, among other things, that during the period in question the sales to plaintiff were subject to regulation under the Natural Gas Act and that the only lawful prices for those sales were controlled by the Natural Gas Act or by rate schedules on file with the Federal Power Commission thereunder.

4. After pleading, each defendant established, by discovery and affidavits, that plaintiff and defendant were both natural gas companies subject to regulation by the Federal Power Commission under the Natural Gas Act and that, during the major portion of the period in question, defendant had had a rate schedule on file with the Federal Power Commission, under the Natural Gas Act, for its sales to plaintiff.

5. Each defendant thereafter moved for summary judgment on the ground, among others, that the "*only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint," either was "fixed by a rate filed with and accepted by the Federal Power Commission, under its regulations prescribed under the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.*, and plaintiff does not base its claim upon that filed rate," or was "prescribed by the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.*, and plaintiff does not base its claim upon that Act."

6. Each main brief filed in support of those motions for summary judgment was in substance identical. In its answering brief, which was in substance identical in each of the actions, plaintiff for the first time agreed that the only lawful rates for the sales in issue were the filed rates with the Federal Power Commission. In light of plaintiff's brief, defendants at p. 23 of their reply briefs, which were identical, summed up their positions:

> "If Cities [plaintiff] stands on common law bases, claiming a common law price, then Cities' claims are defeated, for as Cities has agreed, it 'can claim no rate as a legal right that is other than the filed rate, . . .' On the other hand, if Cities does now make a claim on the filed rate, then Cities is out of this court, for there is no power here to adjudicate it."

In their reply brief, defendants then went on to argue that the "federal courts have exclusive jurisdiction of claims based upon the Natural Gas Act and rates on file with the Federal Power Commission under the Act." Moreover, an identical supplemental memorandum, directed solely to the jurisdictional issue, was filed by plaintiff in each of the actions, and an identical answering memorandum was filed by each of the defendants.

7. In support of their jurisdictional argument defendants relied, in part, upon the decision in *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U. S. 246, 251 (1951), which holds that a purchaser "can claim no rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms"; upon § 154.21 of the Federal Power Commission Regulations, which provide that no natural gas company "shall directly or indirectly, demand, charge or collect any rate or charge for or in connection with the . . . sale of natural gas subject to the jurisdiction of the Commission . . . different from those prescribed in its effective tariff and executed service agreements on file with the Commission. . . ."; and upon § 22 of the Natural Gas Act, 15 U.S.C.A. § 717u, which states:

> "The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this Act or the rules, regulations and orders thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation or order thereunder."

8. On November 12, 1959, after presentation of oral argument in support of defendants' motions for summary judgment in Civil Actions 670, 671, and 708, the Superior Court, acting through the Honorable Andrew D. Christie, sitting as a judge thereof, filed an opinion in those actions in which it decided to deny defendants' motions for summary judgment filed therein. A copy of that opinion is attached as an Exhibit hereof. In its opinion, the Court found that, at least as to the major period involved, the only rate that could be claimed as a legal right was the

rate under the Natural Gas Act but concluded that plaintiff asserted such a claim and that the Superior Court had jurisdiction of it.

9. After the filing of defendants' motions for summary judgment in Civil Actions 670, 671, and 708 and the fixing of a brief and argument schedule thereon, plaintiff moved for summary judgment in each of those cases. A brief schedule was then fixed on plaintiff's motions for summary judgment, but after the presentation of oral argument on defendants' motions for summary judgment in those cases, the Superior Court entered an order in each of those cases directing that the "time for defendant to file its answering brief on plaintiff's pending motion for summary judgment is deferred to and including the twenty-first day after the court files its opinion on the defendant's motion for summary judgment which is presently under advisement," and that further proceedings on plaintiff's motion be likewise deferred.

10. In Civil Action 722 defendant stipulated to a concurrent briefing schedule and the same argument date for presentation of its motion for summary judgment and the motion for summary judgment filed therein by plaintiff. That stipulation concluded with a provision that "[a]n agreement underlying and controlling the above schedule is that this defendant shall not be required to argue or file briefs in respect to the plaintiff's motions for summary judgment prior to argument or the filing of the corresponding briefs on plaintiff's motions for summary judgment in either of its presently pending refund suits against Columbian Fuel Corporation or The Texas Company (1958 Civil Actions No. 670, No. 671 and No. 708, respectively)." Because of that stipulation argument on defendant's motion for summary judgment has not been held in Civil Action 722, but briefs have been filed therein on defendant's motion which are in substance identical to

the briefs filed in Civil Actions 670, 671, and 708, in support of the defendant's motions in those cases which were decided by the opinion of the Superior Court dated November 12, 1959, and the time for the filing of briefs on plaintiff's motion in Civil Action 722 is now also running.

11. Petitioners (heretofore "defendants") aver that jurisdiction of claims concerning rates under the Natural Gas Act is exclusively invested in the federal courts, or in the Federal Power Commission, and that the courts of this state have no jurisdiction thereof.

12. Unless prohibited from so doing by this Honorable Court, the Superior Court and the Honorable Andrew D. Christie, sitting as a judge thereof, will proceed in Civil Actions 670, 671, 708, and 722, to hear and determine claims concerning rates under the Natural Gas Act, and petitioners will be required, in order fully to protect themselves, to litigate those claims in that Court.

13. Petitioners do not have any ordinary remedy, or any other remedy as of right, that is adequate to prevent the Superior Court and the Honorable Andrew D. Christie, sitting as a judge thereof, from proceeding to hear and determine the merits of those claims or otherwise adequately and effectively to protect their rights.

14. By reason of the foregoing, petitioners are entitled to the entry of an order prohibiting the Superior Court, and the Honorable Andrew D. Christie, sitting as a judge thereof, from proceeding further in Civil Actions 670, 671, 708 and 722.

WHEREFORE, petitioners respectfully ask:

(a) That this Court issue an order, directed to the Superior Court of the State of Delaware in and for New Castle County, and to the Honorable Andrew D. Christie, sitting as a judge thereof, staying all further proceedings in Civil Actions 670, 671, 708, and 722, until further order of this Court herein;

(b) That this Court issue a rule, directed to the Superior Court of the State of Delaware in and for New Castle County, and to the Honorable Andrew D. Christie, sitting as a judge thereof, requiring them to appear before this Court and show cause, if any they have, why a writ of prohibition should not be awarded herein;

(c) That, after such hearing on its rule to show cause as may be conducted, this Court issue a writ of prohibition, directed to the Superior Court of the State of Delaware in and for New Castle County, and to the Honorable Andrew D. Christie, sitting as a judge thereof, prohibiting them from proceeding further in Civil Actions 670, 671, 708, and 722; and,

(d) That such other orders and processes issue herein, and the petitioners have such other relief, as may be appropriate and necessary in the premises.

COLUMBIAN FUEL CORPORATION
TEXACO, INC.
PAN AMERICAN PETROLEUM CORPORATION

By: JAMES M. TUNNELL, JR.
James M. Tunnell, Jr.
ANDREW B. KIRKPATRICK, JR.
Andrew B. Kirkpatrick, Jr.
MORRIS, NICHOLS, ARSHT & TUNNELL
3000 duPont Building
Wilmington, Delaware
Attorneys for Petitioners

Dated: November 16, 1959.

APPENDIX F

RATES AND CHARGES; SCHEDULES; SUSPENSION OF NEW RATES

Sec. 4. (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from June 21, 1938) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulations, or contract relating thereto, except after thirty

days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company

making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible. [52 Stat. 822 (1938); 15 U. S. C. § 717e].

FIXING RATE AND CHARGES; DETERMINATION OF COST OF PRODUCTION OR TRANSPORTATION

SEC. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Pro-*

vided however, That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas. [52 Stat. 823 (1938); 15 U.S.C. § 717d]

EXTENSION OF FACILITIES; ABANDONMENT OF SERVICE

SEC. 7. (a) Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilites of, and sell natural gas to, any person or muncipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided,* That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical

connection or sell natural gas when to do so would impair its ability to render adequate service to its customers. [52 Stat. 824 (1938); 15 U. S. C. § 717f (a)]

(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment. [52 Stat. 824 (1938); 15 U. S. C. § 717f (b)]

(c) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however*, That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on the effective date of this amendatory Act, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after the effective date of this amendatory Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

(d) Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require. [56 Stat. 84 (1942); 15 U. S. C. § 717f (d) (1946)]

(e) Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require. [56 Stat. 84 (1942); 15 U. S. C. § 717f (e) (1946)]

(f) The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization. [56 Stat. 84 (1942); 15 U. S. C. § 717f (f)]

(g) Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company. [56 Stat. 84 (1942); 15 U. S. C. § 717f (g)]

(h) When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000. [61 Stat. 459 (1947); 15 U. S. C. § 717f (h)]

ADMINISTRATION POWERS OF COMMISSION; RULES, REGULATIONS, AND ORDERS

SEC. 16. The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things such rules and regula-

tions may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours. [52 Stat. 830 (1938); 15 U.S.C. § 717o]

REHEARING; COURT REVIEW OF ORDERS

SEC. 19 (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission

for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b) of this section, the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part.

No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in

the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the ornginal order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

(c) The filing of an application for rehearing under subsection (a) of this section shall not unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order. [52 Stat. 831 (1938); 15 U.S.C. § 717r]

JURISDICTION OF OFFENSES; ENCOURAGEMENT OF LIABILITIES AND DUTIES

SEC. 22. The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder. Any criminal proceeding shall be brought in the district wherein any chapter or transaction constituting the viola-

tion occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder may be brought in any such district or in the district wherein the defendant is an inhabitant, and process in such cases may be served wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254 and 1291-1294 of Title 28. No costs shall be assessed against the Commission in any judicial proceeding by or against the Commission under this chapter. [52 Stat. 833 (1938); 15 U.S.C. § 717u]

APPENDIX G

154.92 Filing of Rate Schedules by Independent Producer

(a) Every independent producer who, on or since June 7, 1954, has engaged in the interstate transportation or sale of natural gas subject to the jurisdiction of the Commission shall on or before December 1, 1954, file with the Commission rate schedules, as defined in Section 154.93 hereof, setting forth the terms and conditions of service and all rates and charges for such transportation or sale effective on June 7, 1954. To each such rate schedule there shall be attached a statement showing actual billing for a recent month in sufficient detail to show how the billing amount is determined.

(b) Every independent producer who, subsequent to the effective date of these rules, proposes to initiate an interstate transportation or sale of natural gas subject to the jurisdiction of the Commission to an existing or new customer shall file with the Commission not less than 30 days nor more than 90 days prior to the date such transportation or sale is proposed to be initiated a rate schedule, as defined in Section 154.93 hereof, setting forth the terms and conditions of service and all rates and charges for such transportation or sale. To each such rate schedule there shall be attached a statement showing estimated sales and billing for the first month of service, in sufficient detail to show method of billing and prices used. The statement shall also give the proposed date of commencement of service. A complete copy of all material shall be furnished to each purchaser under the rate schedule. With each such filing there shall be submitted a list of parties to whom such material has been mailed.

(c) Every independent producer who transports or sells less than 100,000 Mcf annually of natural gas subject to the jurisdiction of the Commission may, in lieu of the requirements of paragraphs (a) and (b) of this Section file a state-

ment showing (1) the approximate annual volume involved, (2) the rate charged therefor, (3) the name of the purchaser, and (4) the geographical location (field, county, and State) at which delivery is made.

154.93 Rate Scheduled Defined

For the purpose of Sections 154.92 through 154.101 hereof "Rate Schedule" shall mean the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954, showing the service to be provided and the rates and charges, terms, conditions, classifications, practices, rules and regulations affecting or relating to such rates or charges, applicable to the transportation of natural gas in interstate commerce or the sale of natural gas in interstate commerce for resale subject to the jurisdiction of the Commission.

154.94 Changes in Rate Schedules

(a) No change shall be made in any rate, charge, or service in effect on and after June 7, 1954, for the interstate transportation or sale of natural gas in interstate commerce subject to the jurisdiction of the Commission by any independent producer required to file rate schedules pursuant to Section 154.92 hereof, without first filing a change in rates pursuant to Section 4(d) of the Natural Gas Act and in accordance with this section.

(b) Every change in any rate schedule, rate, charge, classification or service effective or applicable to a sale subject to the jurisdiction of the Commission as of June 7, 1954, and on file with the Commission, or required to be filed pursuant to Section 154.92, or in any rate schedule, rate, charge, classification or service effective or applicable to a sale subject to the jurisdiction of the Commission initiated subsequent to June 7 1954, on file with the Commission, or required to be filed with the Commission pur-

suant to Section 154.92 shall be filed with the Commission in triplicate not less than 30 days nor more than 90 days prior to the date such change in rate schedule is proposed to be made effective.

(c) The operation of any provision of the rate schedule providing for future or periodic changes in the rate, charge, classification, or service after June 7, 1954, or the operation of any like provision in any initial rate schedule filed after June 7, 1954, shall constitute a change in rate schedule.

(d) Any change in any rate schedule, rate, charge, classification, or service provided in a rate schedule in effect on June 7, 1954, which by the terms of said rate schedule is to be operative after June 7, 1954, and prior to September 15, 1954, may be filed on less than thirty days' prior notice, subject nevertheless to the right of the Commission to suspend any such proposed change, if the Commission in any case shall, within thirty days after the rate of filing, find it necessary to suspend such proposed change. If any such proposed change is suspended, the suspension period will begin with the designated effective date of such change.

(e) With each change in rate schedule there shall be submitted reasons, nature, and basis for the proposed change, and the following information and data: (i) the date on which such filing is proposed to be made effective; (ii) a comparative statement of sales made and revenues therefrom by months under the then effective rate schedule and under the proposed changed rate schedule, or rate, charge, classification or service contained therein for the 12 months immediately preceding and for the 12 months immediately succeeding the proposed effective date of the rate schedule tendered for filing. Actual data shall be used wherever possible and any estimates shall be so designated and explained. The statement shall be subdivided by customers and delivery points when more than one is involved.

(f) If the proposed change in a rate schedule will result in an increase in a rate or charge, there shall also be submitted a full statement in support of such increase. A complete copy of all material shall be furnished to each party to the rate schedule. With each such filing there shall be submitted a list of the parties to whom such material has been mailed.

(g) Every independent producer who transports or sells less than 100,000 Mcf annually of natural gas subject to the jurisdiction of the Commission may, in lieu of the requirements of the foregoing paragraphs in this section, file a statement showing (1) the approximate annual volume involved; (2) the rate charged therefor; (3) the name of the purchaser; and (4) the geographical location (field, county and State) at which delivery is made.

157.23 Applications For Certificates of Public Convenience and Necessity by Independent Producer

(a) Every independent producer of natural gas as that term is defined in section 154.91 who, on or since June 7, 1954, has engaged in the interstate transportation or sale of natural gas subject to the jurisdiction of the Commission, and who has not heretofore obtained from the Commission a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, as amended, shall, on or before December 1, 1954, file with the Commission an application (original and 7 copies) in accordance with sections 157.24 through 157.27. The Commission reserves the right to request additional copies. Independent producers whose sales of natural gas subject to the jurisdiction of the Commission amount in the aggregate to less than 1,000,000 Mcf annually, may, in lieu of the foregoing, file by December 1, 1954 an application (original and five copies) containing the information called for by Exhibit A. Pending action by the Commission on an application hereunder, the service for which authorization is sought shall be continued.

(b) No independent producer of natural gas shall, subsequent to the issuance of these rules, engage in any new service with respect to the transportation of natural gas in interstate commerce or sale of such natural gas for resale in interstate commerce subject to the jurisdiction of the Commission without approval of the Commission, evidenced by a certificate of public convenience and necessity authorizing such transportation or sale upon application (original and 7 copies) pursuant to sections 157.24 through 157.27. The Commission reserves the right to request additional copies. Independent producers whose sales of natural gas subject to the jurisdiction of the Commission will amount in the aggregate to less than 1,000,000 Mcf annually may, in lieu of the foregoing, file an application (original and five copies) containing the information called for by Exhibit A. Where the economic feasibility of a new pipe line or important extension or expansion of an existing pipe line depends upon proof of an adequate gas supply, all related applications necessary to effectuate the service shall be filed within time to enable the Commission to consider all related matters concurrently.

[Paragraphs (a) and (b) amended by Order 196, 22 F.R. 2881, April 24, 1957]

(c) Filings hereunder shall be made by signatory operators and signatory owners as provided in § 154.91 of this chapter.

[Paragraph (c) amended by Order 190, 21 F.R. 7616, Oct. 4, 1956]

APPENDIX H

Minutes-meeting
January 26, 1955 53320

The Commission considered the rate filings identified on the attached Tables 1, 2, 3 and 4, IP 78, dated January 18, 1955, and voted to accept all of them, and that for all tax increases filed on or before October 1 1954, notice be waived to establish the requested effective dates; but that for those tax changes filed after October 1, 1954, notice be waived to establish the dates of filing or the dates requested, whichever are later, as the effective dates. The filing companies are to be advised of this action by appropriate form letters.

• • • • • • • • • • •

The Commission considered the rate filings identified on the attached Tables 1, 2, 3 and 4, IP 84, dated January 19, 1955, and voted to accept all of them, and that for tax increases and the other changes reported on Table 4 notice be waived to establish the date of filing or the date requested, whichever is later, as the effective date. The filing companies are to be advised of this action by appropriate form letters.

• • • • • • • • • • •

The Commission considered the rate filings identified on the attached Tables 1, 2, 3, 4 and 5, IP 85, dated January 20, 1955, and voted to accept all of them that notice be waived to establish the requested effective dates for all tax increases filed on or before October 1, 1954; and that for those tax changes filed after October 1, 1954, notice be waived to establish the dates of filing or the dates requested, whichever are later, as the effective date. The filing companies are to be advised of this action by appropriate form letters.

• • • • • • • • • • •

The Commission considered the rate filings identified on the attached Table, IP 90, dated January 25, 1955, and suspended the filings listed on Lines 19 and 20, Sheet 1, until March 1, 1955, and voted to accept all of the other filings, with waiver of notice to be granted only for the tax increases to the extent necessary to permit them to become effective on the dates of filing; the other increases to be effective 30 days after filing, or the proposed effective dates, whichever are later. The filing companies are to be advised of this action by appropriate form letters.

* * * * * * * * * * *

The Commission approved a letter to the Empire District Electric Company, advising, in response to its letter of December 13, 1954, that its Rate Schedules FPC Nos. 65 and 68, and Exhibit A to Rate Schedule FPC No. 68, have been accepted for filing, to become effective on February 7, 1955.

IP NO 85
TABLE NO 1
SHEET 1 OF 23

53472

SUMMARY OF INDEPENDENT PRODUCER RATE FILINGS
RATES IN EFFECT ON JUNE 7, 1954

Line No.	Filing Company	Designation Rate Schedule No.	Designation Supplement No.	Description and Date of Instrument	Date of Transmittal Letter	Filing Date	Buyer	Price June 7, 1954 (¢ per Mcf)	Correspondence Control Serial No.
1	Stanolind Oil & Gas Co.	84	—	Contract	6-23-50	11-15-54	11-16-54 Cities Service Gas Co.		154277
2	511 South Boston Ave.	84	1	Letter	7-28-50	"	" (Hugoton Field, Kans.)		
3	Tulsa 3, Oklahoma	84	2	Letter	7-28-50	"	"		
4	" " " "	84	3	Letter	8-8-50	"	"		
5	" " " "	84	4	Sup. Agree.	10-3-50	"	"		
6	" " " "	84	5	Sup. Agree.	10-3-50	"	"		
7	" " " "	84	6	Letter	10-11-50	"	"		
8	" " " "	84	7	Sup. Agree.	10-16-50	"	"		
9	" " " "	84	8	Sup. Agree.	11-22-50	"	"		
10	" " " "	84	9	Letter	11-29-50	"	"		
11	" " " "	84	10	Sup. Agree.	12-13-50	"	"		
12	" " " "	84	11	Sup. Agree.	2-5-51	"	"		
13	" " " "	84	12	Sup. Agree.	2-23-51	"	"		
14	" " " "	84	13	Letter	5-18-51	"	"		
15	" " " "	84	14	Sup. Agree.	5-31-51	"	"		
16	" " " "	84	15	Sup. Agree.	6-25-51	"	"		
17	" " " "	84	16	Sup. Agree.	7-2-51	"	"		
18	" " " "	84	17	Letter	7-25-51	"	"		
19	" " " "	84	18	Letter	7-25-51	"	"		
20	" " " "	84	19	Letter	8-29-51	"	"		
21	" " " "	84	20	Letter	8-31-51	"	"		
22	" " " "	84	21	Sup. Agree.	10-16-51	"	"	11.	
23	" " " "	84	22	Sup. Agree.	10-25-51	"	"		
24	" " " "	84	23	Sup. Agree.	2-19-52	"	"		
25	" " " "	84	24	Sup. Agree.	4-11-52	"	"		
26	" " " "	84	25	Sup. Agree.	5-6-52	"	"		
27	" " " "	84	26	Sup. Agree.	6-27-52	"	"		
28	" " " "	84	27	Sup. Agree.	7-17-52	"	"		
29	" " " "	84	28	Sup. Agree.	7-25-52	"	"		
30	" " " "	84	29	Sup. Agree.	11-12-52	"	"		
31	" " " "	84	30	Release	3-16-53	"	"		
32	" " " "	84	31	Sup. Agree.	5-25-53	"	"		
33	" " " "	84	32	Sup. Agree.	5-28-53	"	"		
34	" " " "	84	33	Release	6-8-53	"	"		
35	" " " "	84	34	Letter	6-8-53	"	"		
36	" " " "	84	35	Letter	6-9-53	"	"		
37	" " " "	84	36	Letter	6-9-53	"	"		
38	" " " "	84	37	Sup. Agree.	6-19-53	"	"		
39	" " " "	84	38	Letter	6-26-53	"	"		
40	" " " "	84	39	Letter	6-26-53	"	"		
41	" " " "	84	40	Sup. Agree.	7-7-53	"	"		

IP NO 85
TABLE NO 1
SHEET 2 OF 23

53473

SUMMARY OF INDEPENDENT PRODUCER RATE FILINGS
RATES IN EFFECT ON JUNE 7, 1954

Line No.	Filing Company	Designation Rate Schedule No.	Supplement No.	Description and Date of Instrument	Date of Transmittal Letter	Filing Date	Buyer	Price June 7, 1954 (¢ per Mcf)	Correspondence Control Serial No.
42	" " " "	84	41	Letter 7-7-53	"	"	"		154277
43	Stanolind Oil & Gas Co.	84	42	Assignment 7-8-53	11-15-54	11-16-54	Cities Service Gas Co.		
44	511 South Boston Ave.	84	43	Release 7-14-53	"	"	(Hugoton Field, Kans.)		
45	Tulsa 3, Oklahoma	84	44	Letter 7-17-53	"	"	"		
46	" " " "	84	45	Letter 7-27-53	"	"	"		
47	" " " "	84	46	Letter 8-7-53	"	"	"		
48	" " " "	84	47	Release 9-9-53	"	"	"		
49	" " " "	84	48	Sup. Agree. 10-27-53	"	"	"		
50	" " " "	84	49	Letter 11-4-53	"	"	"		
51	" " " "	84	50	Sup. Agree. 11-19-53	"	"	"		
52	" " " "	84	51	Release 11-30-53	"	"	"		
53	" " " "	84	52	Letter 12-9-53	"	"	"		
54	" " " "	84	53	Letter 1-8-54	"	"	"		
55	" " " "	84	54	Letter 1-20-54	"	"	"		
56	" " " "	84	55	Letter 2-8-54	"	"	"		
57	" " " "	84	56	Sup. Agree. 2-15-54	"	"	"		
58	" " " "	84	57	Letter 3-4-54	"	"	"		
59	" " " "	84	58	Letter 3-12-54	"	"	"	11.	
60	" " " "	84	59	Letter 4-2-54	"	"	"		
61	" " " "	84	60	Letter 4-27-54	"	"	"		
62	" " " "	84	61	Letter 5-14-54	"	"	"		
63	" " " "	84	62	Letter 5-19-54	"	"	"		
64	" " " "	84	63	Letter 5-19-54	"	"	"		
65	" " " "	84	64	Letter 6-7-54	"	"	"		
66	" " " "	84	65	Letter[1] 6-25-54	"	"	"		
67	" " " "	84	66	Letter[1] 6-25-54	"	"	"		
68	" " " "	84	67	Letter[1] 6-25-54	"	"	"		
69	" " " "	84	68	Letter[1] 7-7-54	"	"	"		
70	" " " "	84	69	Letter[1] 7-9-54	"	"	"		
71	" " " "	84	70	Letter[1] 7-9-54	"	"	"		
72	" " " "	84	71	Letter[1] 7-22-54	"	"	"		
73	" " " "	84	72	Letter[1] 8-3-54	"	"	"		
74	" " " "	84	73	Letter[1] 8-4-54	"	"	"		
75	" " " "	84	74	Letter[1] 8-13-54	"	"	"		
76	" " " "	84	75	Letter[1] 8-19-54	"	"	"		
77	" " " "	84	76	Letter[1] 8-25-54	"	"	"		
78	" " " "	84	77	Kan. C. C. Order[2] 12-2-53	"	"	"		

[1] Offer of assignment of leases. No change in price.
[2] Kansas Corporation Commission Order Affirming Minimum Price of 11.0c per MCF

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

I, Joseph H. Gutride, Secretary of the Federal Power Commission, and official custodian of the records of said Commission, do hereby certify that the attached three pages are true and correct copies of pages numbers 52752, 52756 and 52912 (IP Table No. 64, Sheet 8 of Table 1) from the minutes of the Commission meeting of December 29, 1954.

In witness whereof I have hereunto subscribed my name and caused the seal of the Federal Power Commission to be affixed this 12th day of June A.D., 1959, at Washington, D. C.

J. H. GUTRIDE
Secretary.

52752

MINUTES OF THE THREE THOUSAND EIGHT HUNDRED AND FORTY-FOURTH MEETING

The Commission convened at 10:00 a.m. on December 29, 1954.

Present: Acting Chairman Draper, Commissioners Smith, Digby and Stueck.

The minutes of the 3836th, 3837th, 3838th, 3839th, 3840th, 3841st and 3843rd meetings of December 14, 15, 16, 17, 20, 21 and 23, respectively, were read and approved. (Acting Chairman Draper, not having participated in the meetings of December 15, 17, 20 and 21, did not vote on the question of approval of the minutes for those dates. Commissioners Smith and Stueck, not having participated in the meeting of December 23, did not vote on the question of approval of the minutes for that date. Commissioner Digby, not having participated in the meeting of December 17, did not vote on the question of approval of the minutes for that date.)

Action was taken, as set forth in the documents appended hereto, in the following matters:

(1) Docket Nos. G-1142, G-1508, G-2019, G-2074, G-2210, G-2220, and G-2378, United Gas Pipe Line Company
(Order denying motion of Mississippi River Fuel Corporation to dismiss)

(2) Docket Nos. G-1142, G-1508, G-2019, G-2074, G-2210, G-2220 and G-2378, United Gas Pipe Line Company
(Order directing issuance of subpena for the production of documentary evidence)
(Commissioner Digby dissenting)

(3) Docket No. E-6445, Consolidated Gas Electric Light and Power Company of Baltimore v. Pennsylvania Water & Power Company, Respondent, Public Service Commission of Maryland, Intervenor Docket No. E-6350, Public Service Commission of Maryland v. Pennsylvania Water & Power Company, Susquehanna Transmission Company of Maryland, Safe Harbor Water Power Corporation, Consolidated Gas Electric Light and Power Company of Baltimore, Metropolitan Edison Company, Pennsylvania Power & Light Company, and Philadelphia Electric Company, Respondents Pennsylvania Public Utility Commission, Intervenor
(Order allowing service agreements to take effect)

(4) Docket No. E-6595, Maine Consolidated Power Company
(Order to show cause and fixing date for hearing)

* * * * *

MINUTES-MEETING
DECEMBER 29, 1954 52756

(42) Docket No. G-2534, Alabama-Tennessee Natural Gas Company
(Findings and order issuing certificate of public convenience and necessity and approving abandonment of facilities)

(43) Docket Nos. G-4612 and G-4613, Southern Union Gas Company Docket No. G-4614, Aztec Oil & Gas Company
(Findings and order issuing certificate of public convenience and necessity and dismissing application)
(Commissioner Digby filed a concurring statement)

(44) Docket No. G-4667, Anderson Natural Gas Company
(Findings and order directing physical connection of facilities and sale of natural gas)

(45) Docket No. G-4264, Southern Natural Gas Company
(Order dismissing motion for rehearing and reconsideration)

(46) Docket No. G-2404, Kansas-Nebraska Natural Gas Company, Inc.
(Order approving proposed settlement and accepting revised tariff)

(47) Docket No. E-6587, Southern Utah Power Company
(Order authorizing issuance of short-term promissory note)

* * * * *

The Commission approved a letter to the Assistant Secretary of the Interior, approving, in response to his letter of December 8, 1954, the extension to July 6, 1955, of the period of delivery of experimental energy by Bonneville Power Administration, Docket No. E-6571, to the City of Springfield, Oregon, for resale to the National Metallurgical Corporation.

* * * * *

The Commission considered the rate filings identified on attached Tables 1, 2, 3 and 4, IP 61, dated December 22, 1954, and voted to accept all of the rate schedules for filing; that notice be waived for all tax increases filed on or before October 1, 1954, to establish the requested effective dates; that for those tax increases filed after October 1, 1954, no-

tice be waived only to the extent necessary to establish the dates of filing or the dates requested, whichever are later, as the effective dates; and directed that the filing companies be advised of this action by appropriate form letters.

* * * * *

The Commission approved a letter to the Phillips Petroleum Company, rejecting in response to its letters of November 30, 1954, Rate Schedules 241 and 242.

* * * * *

IP NO 61

SUMMARY OF INDEPENDENT PRODUCER RATE FILINGS
RATES IN EFFECT ON JUNE 7, 1954

Line No.	Filing Company	Designation Rate Schedule No.	Designation Supplement No.	Description and Date of Instrument	Date of Transmittal Letter	Filing Date	Buyer	Price June 7, 1954 (¢ per MCF)	Correspondence Control Serial No.
	The Texas Co. Box 2332,								
146	Houston 1, Texas	86	—	Statement Undated[1]	10-12-54	11-12-54	Sun Oil Co.	7.045332	153896
							East Field, Jim Hogg Co., Tex.		
147	The Texas Co.	87	—	Statement Undated[1]	10-12-54	11-12-54	Sun Oil Co.	7.045332	153895
							Bloomberg Field, Starr and Hidalgo Cos., Tex.		
148	The Texas Co.	98	—	Contract	9-19-52	9-24-54	11-12-54	Kansas-Nebraska Nat. Gas Co.	
149	" " "	98	1	Bill[4]	Apr., 1954	9-24-54	11-12-54	" " " " "	11.03	153927
							Hugoton Field, Kearney Co., Kan.		
150	The Texas Co.	99	—	Contract	8-3-52	9-24-54	11-12-54	Hugoton Plains Gas and Oil Co.	
151	" " "	99	1	Bill[4]	Apr., 1954	9-24-54	11-12-54	" " " " "	11.03	153926
							Hugoton Field, Seward Co., Kan.		
152	The Texas Co.	100	—	Contract	6-16-49	9-24-54	11-12-54	Cities Service Gas Co.	
153	" " "	100	1	Letter	9-8-49	9-24-54	11-12-54	" " " "	
154	" " "	100	2	Bill[4]	June, 1954	9-24-54	11-12-54	" " " "	11.03	153922
							Hugoton Field, Stevens Co., Kan.		
155	The Texas Co.	101	—	Contract	4-3-50	10-20-54	11-12-54	United Gas Pipe Line Co.	
156	" " "	101	1	Letter	4-3-50	10-20-54	11-12-54	" " " " "	
157	" " "	101	2	"	4-3-50	10-20-54	11-12-54	" " " " "	10.220905	153917
158	" " "	101	3	"	2-15-52	10-20-54	11-12-54	" " " " "	
							Baxterville Field, Lamar and Marion Cos., Miss.		
159	The Texas Co.	102	—	Contract	6-1-54	10-26-54	11-12-54	United Gas Pipe Line Co.	12.56	153908
160	" " "	102	1	Letter	6-1-54	10-20-54	11-12-54	" " " " "	
							Duck Lake Field, St. Mary and St. Martin Parishes, La.		

[6] Does not include a 1¢ per Mcf Louisiana gas gathering tax payable by Seller and reimbursed by Buyer as per contract.
[5] Includes share of revenue from sales to Gaylord Container Corp. as per letter of 2-15-52.
[4] Kansas Corporation Commission minimum price indicated by bill.
[3] Is Kansas minimum price.
[2] Price received was prevailing price of Purchaser taking delivery in Sun Field, Starr Co., Texas. This is Aug., 1954 price.
[1] Formal contract not yet executed.

698

APPENDIX I

FEDERAL POWER COMMISSION
WASHINGTON 25

March 2, 1955

Stanolind Oil & Gas Co.
511 South Boston Avenue
Tulsa 3, Oklahoma

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the rates being charged June 7, 1954, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 174-B. The Act and the Commission's rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is

without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

Very truly yours,

/s/ Leon M. Fuquay
LEON M. FUQUAY
Secretary

Description of Document	*Date of Letter of Transmittal*	*Rate Schedule Designation*
Contract dated 6/23/50	11/15/54	Stanolind Oil & Gas Co. F.P.C. Gas Rate Sched. No. 84
Letter dated 7/28/50	11/15/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/28/50	11/15/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/8/50	11/15/54	Supplement No. 3 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 10/3/50	11/15/54	Supplement No. 4 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 10/3/50	11/15/54	Supplement No. 5 to F.P.C. Gas Rate Sched. No. 84
Letter dated 10/11/50	11/15/54	Supplement No. 6 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 10/16/50	11/15/54	Supplement No. 7 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 11/22/50	11/15/54	Supplement No. 8 to F.P.C. Gas Rate Sched. No. 84
Letter dated 11/29/50	11/15/54	Supplement No. 9 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 12/13/50	11/15/54	Supplement No. 10 to F.P.C. Gas Rate Sched. No. 84

Description of Document	*Date of Letter of Transmittal*	*Rate Schedule Designation*
Supp. Agree. dated 2/5/51	11/15/54	Supplement No. 11 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 2/23/51		Supplement No. 12 to F.P.C. Gas Rate Sched. No. 84
Letter dated 5/18/51	11/15/54	Supplement No. 13 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 5/31/51	11/15/54	Supplement No. 14 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 6/25/51	11/15/54	Supplement No. 15 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 7/2/51	11/15/54	Supplement No. 16 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/25/51	11/15/54	Supplement No. 17 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/25/51	11/15/54	Supplement No. 18 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/29/51	11/15/54	Supplement No. 19 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/31/51	11/15/54	Supplement No. 20 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 10/16/51	11/15/54	Supplement No. 21 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 10/25/51	11/15/54	Supplement No. 22 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 2/19/52	11/15/54	Supplement No. 23 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 4/11/52	11/15/54	Supplement No. 24 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 5/6/52	11/15/54	Supplement No. 25 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 6/27/52	11/15/54	Supplement No. 26 to F.P.C. Gas Rate Sched. No. 84

Description of Document	*Date of Letter of Transmittal*	*Rate Schedule Designation*
Supp. Agree. dated 7/17/52	11/15/54	Supplement No. 27 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 7/25/52	11/15/54	Supplement No. 28 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 11/12/52	11/15/54	Supplement No. 29 to F.P.C. Gas Rate Sched. No. 84
Release dated 3/16/53	11/15/54	Supplement No. 30 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 5/25/53	11/15/54	Supplement No. 31 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 5/28/53	11/15/54	Supplement No. 32 to F.P.C. Gas Rate Sched. No. 84
Release dated 6/8/53	11/15/54	Supplement No. 33 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/8/53	11/15/54	Supplement No. 34 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/9/53	11/15/54	Supplement No. 35 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/9/53	11/15/54	Supplement No. 36 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. 6/19/53	11/15/54	Supplement No. 37 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/26/53	11/15/54	Supplement No. 38 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/26/53	11/15/54	Supplement No. 39 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 7/7/53	11/15/54	Supplement No. 40 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/7/53	11/15/54	Supplement No. 41 to F.P.C. Gas Rate Sched. No. 84
Assignment dated 7/8/53	11/15/54	Supplement No. 42 to F.P.C. Gas Rate Sched. No. 84
Release dated 7/14/53	11/15/54	Supplement No. 43 to F.P.C. Gas Rate Sched. No. 84

Description of Document	*Date of Letter of Transmittal*	*Rate Schedule Designation*
Letter dated 7/17/53	11/15/54	Supplement No. 44 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/27/53	11/15/54	Supplement No. 45 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/7/53	11/15/54	Supplement No. 46 to F.P.C. Gas Rate Sched. No. 84
Release dated 9/9/53	11/15/54	Supplement No. 47 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 10/27/53	11/15/54	Supplement No. 48 to F.P.C. Gas Rate Sched. No. 84
Letter dated 11/4/53	11/15/54	Supplement No. 49 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 11/19/53	11/15/54	Supplement No. 50 to F.P.C. Gas Rate Sched. No. 84
Release dated 11/30/53	11/15/54	Supplement No. 51 to F.P.C. Gas Rate Sched. No. 84
Letter dated 12/9/53	11/15/54	Supplement No. 52 to F.P.C. Gas Rate Sched. No. 84
Letter dated 1/8/54	11/15/54	Supplement No. 53 to F.P.C. Gas Rate Sched. No. 84
Letter dated 1/20/54	11/15/54	Supplement No. 54 to F.P.C. Gas Rate Sched. No. 84
Letter dated 2/8/54	11/15/54	Supplement No. 55 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 2/15/54	11/15/54	Supplement No. 56 to F.P.C. Gas Rate Sched. No. 84
Letter dated 3/4/54	11/15/54	Supplement No. 57 to F.P.C. Gas Rate Sched. No. 84
Letter dated 3/12/54	11/15/54	Supplement No. 58 to F.P.C. Gas Rate Sched. No. 84
Letter dated 4/2/54	11/15/54	Supplement No. 59 to F.P.C. Gas Rate Sched. No. 84
Letter dated 4/27/54	11/15/54	Supplement No. 60 to F.P.C. Gas Rate Sched. No. 84

Description of Document	*Date of Letter of Transmittal*	*Rate Schedule Designation*
Letter dated 5/14/54	11/15/54	Supplement No. 61 to F.P.C. Gas Rate Sched. No. 84
Letter dated 5/19/54	11/15/54	Supplement No. 62 to F.P.C. Gas Rate Sched. No. 84
Letter dated 5/19/54	11/15/54	Supplement No. 63 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/7/54	11/15/54	Supplement No. 64 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/25/54	11/15/54	Supplement No. 65 to F.P.C. Gas Rate Sched. No. 84
letter dated 6/25/54	11/15/54	Supplement No. 66 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/25/54	11/15/54	Supplement No. 67 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/7/54	11/15/54	Supplement No. 68 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/9/54	11/15/54	Supplement No. 69 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/9/54	11/15/54	Supplement No. 70 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/22/54	11/15/54	Supplement No. 71 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/3/54	11/15/54	Supplement No. 72 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/4/54	11/15/54	Supplement No. 73 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/13/54	11/15/54	Supplement No. 74 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/19/54	11/15/54	Supplement No. 75 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/25/54	11/15/54	Supplement No. 76 to F.P.C. Gas Rate Sched. No. 84
Kan. C.C. Order dated 12/2/53	11/15/54	Supplement No. 77 to F.P.C. Gas Rate Sched. No. 84

FEDERAL POWER COMMISSION

The Texas Co. Washington 25
Box 2332 Feb. 7, 1955
Houston 1, Texas

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the rates being charged June 7, 1954, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 174. The Act and the Commission's rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice effecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

Very truly yours,
LEON M. FUQUAY
Leon M. Fuquay
Secretary

Description of Document	*Date of Letter of Transmittal*	*Rate Schedule Designation*
Statement undated	9/24/54	The Texas Co. F.P.C. Gas Rate Sched. No. 68
Letter 12/20/51	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 68
Bill April 1954	9/24/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 68
Statement undated	9/24/54	F.P.C. Gas Rate Sched. No. 69
Letter 12/17/51	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 69
Bill June 1954	9/24/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 69
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Bill June 1954	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 70
Statement 10/6/54	9/24/54	F.P.C. Gas Rate Sched. No. 71
Contract 10/1/50	9/24/54	F.P.C. Gas Rate Sched. No. 72
Sup. Agree. 3/30/51	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 72
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Statement 10/20/54	10/20/54	F.P.C. Gas Rate Sched. No. 77
Statement 10/20/54	10/20/54	F.P.C. Gas Rate Sched. No. 78
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 79
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 80
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 81

Description of Document	*Date of Letter of Transmittal*	*Rate Schedule Designation*
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 82
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 83
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 84
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 85
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 86
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 87
Contract 9/19/52	9/24/54	F.P.C. Gas Rate Sched. No. 98
Bill April 1954	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 98
Contract 8/3/52	9/24/54	F.P.C. Gas Rate Sched. No. 99
Bill April 1954	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 99
Contract 8/16/49	9/24/54	F.P.C. Gas Rate Sched. No. 100
Letter 9/8/49	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 100
Bill June 1954	9/24/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 100
Contract 4/3/50	10/20/54	F.P.C. Gas Rate Sched. No. 101
Letter 4/3/50	10/20/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 101
Letter 4/3/50	10/20/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 101
Letter 2/15/52	10/20/54	Supplement No. 3 to F.P.C. Gas Rate Sched. No. 101
Contract 6/1/54	10/20/54	F.P.C. Gas Rate Sched. No. 102
Letter 6/1/54	10/20/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 102
Contract 4/26/48	9/24/54	F.P.C. Gas Rate Sched. No. 103

Description of Document	*Date of Letter of Transmittal*	*Rate Schedule Designation*
Contract 6/25/47	9/24/54	F.P.C. Gas Rate Sched. No. 104
Contract 5/26/41	9/24/54	F.P.C. Gas Rate Sched. No. 105
Contract 9/9/49	9/24/54	F.P.C. Gas Rate Sched. No. 106
Sup. Agree. 9/9/49	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 106
Sup. Agree. 6/8/53	9/24/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 106
Bill April 1954	9/24/54	Supplement No. 3 to F.P.C. Gas Rate Sched. No. 106
Contract 9/9/49	9/24/54	F.P.C. Gas Rate Sched. No. 107
Sup. Agree. 9/9/49	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 107
Sup. Agree. 9/22/50	9/24/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 107
Bill April 1954	9/24/54	Supplement No. 3 to F.P.C. Gas Rate Sched. No. 107
Contract 9/9/49	9/24/54	F.P.C. Gas Rate Sched. No. 108
Sup. Agree. 9/9/49	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 108
Sup. Agree. 10/22/52	9/24/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 108
Bill June 1954	9/24/54	Supplement No. 3 to F.P.C. Gas Rate Sched. No. 108
Contract 9/9/49	9/24/54	F.P.C. Gas Rate Sched. No. 109
Sup. Agree. 9/9/49	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 109
Sup. Agree. 11/18/52	9/24/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 109
Bill April 1954	9/24/54	Supplement No. 3 to F.P.C. Gas Rate Sched. No. 109
Contract 9/9/49	9/24/54	F.P.C. Gas Rate Sched. No. 110
Sup. Agree. 9/9/49	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 110

Description of Document	*Date of Letter of Transmittal*	*Rate Schedule Designation*
Sup. Agree. 5 18 50	9 24 54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 11
Bill June 1954	9/24/54	Supplement No. 3 to F.P.C. Gas Rate Sched. No. 11
Contract 5 23 45	9 24 54	F.P.C. Gas Rate Sched. No. 11
Sup. Agree. 8 1 52	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 11
Bill April 1954	9 24 54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 11
Contract 1/20/53	9 24 54	F.P.C. Gas Rate Sched. No. 11
Statement 11/17/54	11/17 54	F.P.C. Gas Rate Sched. No. 11
Statement 11 17/54	11/17 54	F.P.C. Gas Rate Sched. No. 11
Statement 11/17/54	11/17 54	F.P.C. Gas Rate Sched. No. 11
Statement 11/17/54	11/17 54	F.P.C. Gas Rate Sched. No. 11
Statement 11/17/54	11 17/54	F.P.C. Gas Rate Sched. No. 11
Statement 11/17/54	11/17/54	F.P.C. Gas Rate Sched. No. 11
Statement 11/17/54	11/17/54	F.P.C. Gas Rate Sched. No. 11
Statement 11/17/54	11/17/54	F.P.C. Gas Rate Sched. No. 12

FEDERAL POWER COMMISSION

Washington 25

The Texas Company
P. O. Box 2332
Houston 1, Texas

Sept. 8, 1957

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing, that notice is hereby waived and that such rate schedules shall be effective as of the dates shown.

In the event that any of the documents comprising the

listed schedules contains provisions for future automatic adjustments in rates and charges based upon new or incorporated taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the effective rates and charges, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 o fthe Commission's Regulations under such Act as promulgated by this Commission's Order No. 176-8. The Act and the Commission's Rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

In future correspondence with the Commission concerning the rate schedules listed below, please refer to the FPC Gas Rate Schedule designation furnished you herewith, including the name of the independent producer and the rate schedule and supplement numbers.

By direction of the Commission.

J. H. GUTRIDE
Secretary

RATE SCHEDULE DESIGNATION

The Texas Company

Description of Document	Date of Letter of Transmittal	FPC Gas Rate Schedule No.	Supplement No.	Effective Date
Notice of Change Undated	6-13-57	72	5	7-1-57
Notice of Change Undated	6-13-57	98	4	7-1-57
Notice of Change Undated	6-13-57	99	4	7-1-57
Notice of Change Undated	6-13-57	100	5	7-1-57
Notice of Change Undated	6-13-57	106	6	7-1-57
Notice of Change Undated	6-13-57	107	6	7-1-57
Notice of Change Undated	6-13-57	108	6	7-1-57
Notice of Change Undated	6-13-57	109	4	7-1-57
Notice of Change Undated	6-13-57	70	4	7-1-57
Notice of Change Undated	6-13-57	110	6	7-1-57
Notice of Change Undated	6-13-57	112	3	7-1-57

cc: F. E. Gallagher, Attorney
The Texas Company
195 E. 42d Street
New York 17, New York

Mr. M. L. Terry
The Texas Company
P. O. Box 2420
Tulsa 2, Oklahoma

APPENDIX J

A List of Some of the Cases Pending In Various States and Federal Courts Involving Issues Similar to the Issue in This Case

DELAWARE (Suits in Superior Court, New Castle County):

Northern Natural Gas Co. v. Champlin Oil & Refining Co.;
Northern Natural Gas Co. v. Hugoton Plains Gas & Oil Co.;
Northern Natural Gas Co. v. White Eagle Oil Co.;
Northern Natural Gas Co. v. The Texas Co.;
Northern Natural Gas Co. v. Republic Natural Gas Co.;
Cities Service Gas Co. v. Western Natural Gas Co.;
Cities Service Gas Co. v. Columbian Fuel Co.;
Cities Service Gas Co. v. The Texas Co.;
Cities Service Gas Co. v. Pan American Petroleum Co.;
Colorado Interstate Gas Co. v. White Eagle Oil Co.;

IOWA:

Northern Natural Gas Co. v. Cities Service Oil Co., District Court, Pottawatomie Co., Iowa;

KANSAS (Suits in United States District Court):

Northern Natural Gas Co. v. R. D. Burris (Topeka);
Northern Natural Gas Co. v. Trees Oil Co. and M. L. Benedum (Topeka);
Northern Natural Gas Co. v. Walter F. Kuhn (Topeka);
Northern Natural Gas Co. v. Courtney B. Davis and Marcellete G. Davis (Topeka);
Northern Natural Gas Co. v. Girard J. Neuner (Topeka);
Northern Natural Gas Co. v. Howard Kuhn (Topeka);
Northern Natural Gas Co. v. H. M. Gillespie (Topeka);
Northern Natural Gas Co. v. John R. LeBosquet (Topeka);
Northern Natural Gas Co. v. H. M. Gillespie and John R. LeBosquet (Topeka);

Northern Natural Gas Co. v. Alf M. Landon (Topeka);
Northern Natural Gas Co. v. Margaret Landon Mills (Topeka);
Cities Service Gas Co. v. Magnolia Petroleum Co. (Wichita);

KANSAS (Suits in State District Courts):

The Stevens County Oil & Gas Co. et al. v. Panhandle Eastern Pipe Line Co. (Stevens County);
Kansas-Nebraska Natural Gas Co. v. H. M. Gillespie et al. (Sedgwick County);
Kansas-Nebraska Natural Gas Co. v. D. R. Lauck et al. (Sedgwick County);
Kansas-Nebraska Natural Gas Co. v. Ben F. Brack (Sedgwick County);
Kansas-Nebraska Natural Gas Co. v. William S. Milner et al. (Sedgwick County);
Kansas-Nebraska Natural Gas Co. v. D. R. Lauck Oil Co. et al. (Sedgwick County);
Fred Shore & Hazel Shore v. Western Natural Gas Co. and Cities Service Gas Co. (Seward County);
G. L. Hayward and Inez Hayward v. Island Gas, Inc., Walter Kuhn and Panhandle Eastern Pipe Line Co. (Morton County);

MINNESOTA (Suit in United States District Court):

Northern Natural Gas Co. v. John B. Hawley, Jr., United States District Court, Fourth Division;

NEBRASKA (Suits in State Court):

Northern Natural Gas Co. v. Pan American Petroleum Corp. (Lancaster County);
Kansas-Nebraska Natural Gas Co. v. White Eagle Oil Co. (Lancaster County);

(Suits in United States District Court):

Northern Natural Gas Co. v. Magnolia Petroleum Corp. (Lincoln);

Northern Natural Gas Co. v. Saturn Oil & Gas Corp. (Lincoln);
Northern Natural Gas Co. v. United Producing Co. (Lincoln);
Kansas-Nebraska Natural Gas Co. v. Cities Service Oil Co. (Civil No. 0674);
Kansas-Nebraska Natural Gas Co. v. Pan American Petroleum Corp. (Civil No. 0675);

OKLAHOMA (United States District Court):

Northern Natural Gas Co. v. William Broadhurst (Tulsa);
Northern Natural Gas Co. v. Annee Parker (Western District);
Cities Service Gas Co. v. J. M. Huber Corp. (Western District);
Cities Service Gas Co. v. United Producing Co. (Western District);
Cities Service Gas Co. v. Cabot Carbon Co. (Western District);
Colorado Interstate Gas Co. v. Socony Motor Oil Co. (Northern District);

OKLAHOMA (State District Court, Tulsa):
Colorado Interstate Gas Co. v. Broadhurst;
Colorado Interstate Gas Co. v. Helmerich;

FLORIDA (United States District Court):

Colorado Interstate Gas Co. v. Gillory;

COLORADO (United States District Court):

Colorado Interstate Gas Co. v. Sinclair Oil & Gas Co.;

COLORADO (State District Court in and for the City and County of Denver):

Colorado Interstate Gas Co. v. Pan American Petroleum Corp.;
Colorado Interstate Gas Co. v. Cities Service Oil Co.

FILE COPY

FILED
MAY 31 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. ~~814~~ 80

PAN AMERICAN PETROLEUM CORPORATION, a Delaware Corporation, *Petitioner*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, and CITIES SERVICE GAS COMPANY, a Delaware Corporation, *Respondents*.

No. ~~815~~ 81

TEXACO INC., a Delaware Corporation, *Petitioner*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, Respondents, and CITIES SERVICE GAS COMPANY, a Delaware Corporation, *Intervening Respondent*.

No. ~~816~~ 82

COLUMBIAN FUEL CORPORATION, *Petitioner*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, and CITIES SERVICE GAS COMPANY, *Respondents*.

On Petitions for a Writ of Certiorari to the Supreme Court of the State of Delaware

BRIEF OF CITIES SERVICE GAS COMPANY IN OPPOSITION

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May 31, 1960

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Federal Power Commission Order No. 174 5
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 914

PAN AMERICAN PETROLEUM CORPORATION, a Delaware Corporation, *Petitioner*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, and CITIES SERVICE GAS COMPANY, a Delaware Corporation, *Respondents*.

No. 915

TEXACO INC., a Delaware Corporation, *Petitioner*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, Respondents, and CITIES SERVICE GAS COMPANY, a Delaware Corporation, *Intervening Respondent*.

No. 916

COLUMBIAN FUEL CORPORATION, *Petitioner*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, and CITIES SERVICE GAS COMPANY, *Respondents*.

On Petitions for a Writ of Certiorari to the Supreme Court of the State of Delaware

BRIEF OF CITIES SERVICE GAS COMPANY IN OPPOSITION

OPINION BELOW

The opinion of the Superior Court of Delaware in and for New Castle County in Civil Action Nos. 670, 671 and 708 (1958) is reported at 155 A. 2d 879 (Pan American Appendix, pp. 1a-15a). The opinion of the Supreme Court of Delaware is reported at 158 A. 2d 478 (Pan American Appendix pp. 16a-30a).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petitions.

QUESTION PRESENTED

Whether Section 22 of the Natural Gas Act ousts State courts of their jurisdiction to entertain common law actions for recovery or restitution of payments made for gas in excess of the agreed-upon contract prices simply because such contracts were filed as rate schedules with the Federal Power Commission.

STATUTE AND REGULATION INVOLVED

The provision of the federal statute involved is Section 22 of the Natural Gas Act, 52 Stat. 833 (1938), 15 U.S.C. 717 u (printed in Pan American Appendix, pp. 54a-55a). Sections 154.91 through 154.95 and Section 154.101 of the Federal Power Commission's Regulations under the Natural Gas Act (18 C.F.R. 154.92-154.95 and 154.101) are also involved. Sections 154.91 through 154.94 and Section 154.101 are printed at pp. 40a-46a of Columbian's Appendix. Section 154.95 provides as follows:

"154.95 *Oral Agreements.*

"'If any rate schedule or change in a rate schedule is not in writing, its terms shall be reduced to writing and filed with the Commission. If the parties are not able to agree to the precise terms within a reasonable time, the applicant shall file, in triplicate, a statement of his understanding of the agreement, serving a copy thereof on the other parties to the agreement. Such other parties, in the latter event, may subsequently file, in triplicate, their understanding of the agreement."

STATEMENT

These proceedings stem from the lengthy litigation commenced six years ago involving the validity of the Kansas minimum price order, which has already twice reached this Court. Since the instant cases (Nos. 914, 915 and 916) all seek certiorari to review the same judgment, and since the basic issue raised in the three cases is the same, this single Brief is filed in opposition to each of the three Petitions.

Cities Service Gas Company (Cities) and the Petitioners are all Delaware corporations. Cities is a natural gas pipeline company subject to the jurisdiction of the Federal Power Commission. Petitioners are producers of natural gas who are also subject to the jurisdiction of the Federal Power Commision. Cities purchases natural gas from Petitioners and others, and transports and sells such gas to local distributing companies for resale to the general public.

In 1949, 1950 and 1951, Cities entered into fixed price contracts with each of the Petitioners pursuant to which the Petitioners agreed to sell and Cities agreed to buy natural gas produced by Petitioners from the Hugoton Field of Kansas. In each case, the price agreed upon was less than 11¢ per thousand cubic feet at a pressure base of 14.65 psia.

On December 2, 1953, the Corporation Commission of the State of Kansas promulgated an order, effective January 1, 1954, fixing a minimum price of 11¢ per Mcf to be paid for natural gas produced from the Kansas Hugoton Field (Pan American Appendix p. 17a). The effect of this order was, of course, to require Cities to pay Petitioners higher prices than agreed upon in the respective contracts. Proceedings

were immediately instituted by Cities for judicial review of the order.

On January 21, 1954, before making any payments for gas purchased subsequent to the effective date of the Kansas minimum price order, Cities wrote a letter to each of the Petitioners relative to that order. After stating in the letter that Cities had filed suit to obtain judicial review of the order, Cities notified the Petitioners that it intended to pay for gas purchased from the Hugoton Field in strict compliance with the terms of the order; that such compliance, however, was being made to avoid the penalties provided by the Kansas statutes for violation; and that the payments to Petitioners, pending final judicial determination of the validity of the order, "are to be considered and accepted by you as involuntary payments on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said order." The final paragraph of the letter stated:

> "In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments". (Pan American Appendix p. 18a)

Thereafter, each monthly voucher check sent to each of the Petitioners for gas purchased by Cities bore the legend that the payment was made subject to the provisions of the January 21, 1954 letter. Each Petitioner accepted all such checks, cashed them and made no objection to the conditions upon which they were tendered. Indeed, Petitioner, Pan American (formerly Stanolind), by letter to Cities dated January 27, 1954, stated:

"We construe the last paragraph of said [January 21, 1954] letter to mean that Cities will expect Stanolind to refund to it the amount of overpayments, if any, without any interest thereon should the said Order of December 2, 1953 be finally judicially modified or declared to be invalid in whole or in part by an adjudication which would be binding and controlling on Stanolind. We will, therefore, accept payment on this basis".[1]

The impact of the Kansas minimum price order upon Cities together with other increased costs was such that it was compelled to file increased rates with the Federal Power Commission at Docket No. G-2410. After a five-month suspension period (except with respect to industrial rates), the increased rates were made effective September 23, 1954, subject to an undertaking to refund any amounts found unjustified, after hearing, by the Commission. On May 25, 1956, the Federal Power Commission entered its order approving a settlement of that case. By the terms of that order, Cities is required to refund to its jurisdictional customers, in accordance with the formula set forth in the order, the major portion of the money obtained by Cities as a result of the very litigation involved herein (See *In Re Cities Service Gas Company*, 15 F.P.C. 1448, 1453-58).

In the meantime, in order to give effect to this Court's decision in *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954), the Federal Power Commission, on July 16, 1954, issued its Order No. 174 (later replaced or supplemented by Orders 174-A and 174-B) requiring producers, such as Petitioners, selling gas

[1] Civil Action No. 722, Superior Court of Delaware, Cities Service Gas Company v. Pan American Petroleum Corporation, Complaint p. 4.

in interstate commerce (theretofore not regulated by the Commission) to file their contracts in effect on June 7, 1954, as their rate schedules. "Rate schedule" was defined as "* * * the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954 * * *" (18 C.F.R. 154.93). The order did not require the filing of any "rate", nor did the order purport to determine the rates required to be paid for gas. It merely ordered the filing of the above-enumerated documents, which *documents* constituted the "rate schedule."

Petitioners filed their basic contracts and supplements thereto, the Kansas minimum price order, and a billing statement for a then current month, showing thereon the Kansas ordered minimum price. Petitioner, Texaco, also filed the aforementioned refund letter of January 21, 1954 (See p. 6 of Texaco's Petition herein).

Thereafter, the Secretary of the Commission, pursuant to an unpublished minute of the Commission directing such action, wrote a form letter to each of the Petitioners advising them that their tendered rate filings had been accepted for filing (Pan American Appendix pp. 61a-62a, 65a-68a). Cities was not notified of the entry of the minute. Nor was it served with copies of the Secretary's letters to Petitioners.

The Order 174 series of orders contained no provision requiring producers, such as Petitioners, to serve purchasers, such as Cities, with copies of the initial filings made pursuant to the orders. Nor did Order 174 make any provision for notification by the Commission to the purchasers of the acceptance of the producer filings. No provision for any hearing was contained in the order and none was held.

On January 20, 1958, this Court held, in the litigation referred to in the aforementioned letter of January 21, 1954, that the Kansas order was void. *Cities Service Gas Company* v. *State Corporation Commission*, 355 U.S. 391. Thereafter, the Supreme Court of Kansas held that the Kansas order had been void *ab initio* for lack of jurisdiction in the Kansas Corporation Commission to issue the order. *Cities Service Gas Company* v. *Kansas Corporation Commission*, 184 Kan. 540, 337 P. 2d 640 (1959), *cert.* den. 361 U.S. 836 (1959).

After the January 20, 1958 decision of this Court, Cities resumed payments for gas purchased from Petitioners at the contract prices instead of the State-ordered minimum price, and made demand upon Petitioners for repayment of the differences between the contract prices and the amounts actually paid for gas at the 11¢ price fixed in the void Kansas minimum price order. Petitioners refused to make any refunds and Cities brought the actions below to recover such differences.

The theory of Cities' cases as set forth in each complaint filed in the Superior Court of Delaware is rooted in common law principles (Pan American Appendix pp. 7a, 20a). Cities seeks recovery on the following grounds:

(1) That Petitioner, Pan American, expressly agreed to refund the overpayments by its letter to Cities of January 27, 1954; that payments to all Petitioners, including Pan American, pursuant to the letters of January 21, 1954 and the receipt and retention of such monthly payments constituted contracts by Petitioners to refund the overpayments sought to be recovered; and that those letters ripened into contracts when this Court held the Kansas price order void.

(2) Alternately, as particularly set forth in the Complaints, Cities seeks restitution of the amounts paid in excess of the contract prices, which payments were made involuntarily to avoid the criminal sanctions provided by law for violation of the Kansas minimum price order.

At no place in Cities' complaints is any reference made to, or reliance placed upon, the Natural Gas Act or any orders, rules or regulations issued thereunder or any action taken pursuant thereto. Any questions relating to such matters came into the case as defenses set up by Petitioners in their Answers (Pan American Appendix pp. 6a-7a, 20a).

Texaco and Columbian filed Motions for Summary Judgment[2] in the Delaware Superior Court. In their reply briefs on the Motions, they raised for the first time the contention that Section 22 of the Natural Gas Act precluded the Delaware State courts from entertaining the instant causes of action (Pan American Appendix pp. 5a-6a). The Superior Court held that Petitioners' contention that it lacked jurisdiction "to be without merit." It agreed with Cities that the "actions here asserted are based on contracts and/or restitution and not on the Natural Gas Act * * *" (Pan American Appendix p. 7a).

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[2] Upon the alleged grounds that: (1) From January 1, 1954 to July 16, 1954 (date of issuance of F.P.C. Order No. 174) the only lawful price was that set forth in the Kansas order; (2) After July 16, 1954, (the date of the aforementioned Order 174) the only lawful price was that on file with the F.P.C. (contending such price was the 11¢ Kansas-ordered minimum price); or (3) if the Kansas order was ineffective during the period from January 1, 1954 to July 16, 1954, or if the defendant had no rate on file with the F.P.C., the only lawful price would have been that prescribed by the Natural Gas Act (15 U.S.C. §§ 717 *et seq.*), and Cities does not base its claim upon that Act. (Pan American Appendix pp. 4a-5a).

Thereafter, Texaco and Columbian, joined by Pan American,[3] applied to the Supreme Court of Delaware for a Writ of Prohibition. The Writ was denied by a unanimous Court (Pan American Appendix pp. 16a-30a).

ARGUMENT

I.

The Petitions Raise Questions Which Have Been Settled by This Court

Cities, as previously stated, seeks recovery of payments made in excess of the contract prices, relying solely on common law grounds of breach of contract and restitution. Petitioners contend that Cities' right to recovery is barred by reason of the fact that the Commission accepted for filing as Petitioners' rate schedules the documents previously mentioned, including the 11-cent Kansas minimum price order. Petitioners look upon such acceptance as setting aside the contract prices, and fixing as the legally effective price the 11-cent price contained in the void Kansas minimum price order.

Thus, here is a case where Petitioners contend, by way of defense to the suits, that without a hearing and without any notice to Cities, the Commission set aside the contract price and fixed a price of 11 cents by merely sending Petitioners a letter notifying them that the Commission had accepted the void Kansas minimum price order for filing as part of their rate schedules. The defense, we submit, borders on the frivolous. This is particularly so in view of the aforementioned letter of January 21, 1954 sent by Cities to each Peti-

[3] Pan American also filed a Motion for Summary Judgment. Its Motion has not yet been disposed of by the Superior Court.

tioner, and in view of the fact that the Commission has made it clear that its letters accepting rate schedules for filing did not involve a "substantive" determination but was only "procedural" in nature. Re, *Cities Service Gas Company*, 12 P.U.R. 3d, pp. 3, 11.[4] Additionally, the Commission has taken the position that "since the Kansas order has been declared invalid on the date of its filing, it was never a part of the filed rate, and Cities Service is not barred by the filed 11¢ rate from recovering any payments made by it in excess of the contract price" (Pan American Appendix 14a-15a).[5] Indeed, the fact that the Commission, subsequent to the filing of the Kansas minimum price order pursuant to Order 174, ordered Cities to make the refunds mentioned above from monies recovered as a result of the instant litigation, is a clear recognition by the Commission that the Cities' actions here involved are not inconsistent with the rate schedules accepted by the Commission for filing (15 F.P.C. 1448, 1453-1458).

The very question raised by Petitioners' defense has been passed upon by two United States Courts of Appeal. Both courts have held that the filing of the void minimum price order was a nullity, and that the legally

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[4] The Commission there said:

> "Acceptance of a rate schedule for filing does not involve a determination by the commission of a substantive nature, nor does it indicate approval of the level or form of the rates set forth, or of the conditions of service. Such acceptance is a procedural matter wherein the person or company involved is informed that the rate schedule filed satisfies the formal requirements of §§ 154.92(b) and 154.93 of the commission's regulations."

[5] See *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F. 2d 860, 862, 864 (10th Cir., 1958), *cert. den.* 358 U.S. 837 (1958).

effective rate accepted by the Commission was the rate fixed in the valid and binding contract between the parties. *Natural Gas Pipeline Company of America* v. *Federal Power Commission*, 253 F. 2d 3 (3rd Cir., 1958), *cert. den.* 356 U.S. 957 (1958); *Cities Service Gas Company* v. *Federal Power Commission*, 255 F. 2d 860 (10th Cir., 1958), *cert. den.* 358 U.S. 837 (1958); See also, *Phillips Petroleum Co.* v. *Federal Power Commission*, 258 F. 2d 906 (10th Cir., 1958); *Kerr-McGee Oil Industries* v. *Federal Power Commission*, 260 F. 2d 602 (10th Cir., 1958).

Petitioners' contention that the unilateral filing of the void Kansas minimum price order, as part of their rate schedules, established the 11-cent minimum price as the legally effective price, is a bald attempt to breathe life back into the Kansas minimum price order. Such contention makes a mockery of this Court's decision striking down that order. This is all the more so in the light of *Natural Gas Pipeline Company of America* v. *Federal Power Commission, supra,* where the Court unequivocally held, in cognate circumstances involving the Oklahoma minimum price order, that (253 F. 2d at p. 7):

> "* * * When the United States Supreme Court found Oklahoma's action to have been unlawful and set the State Commission order aside, there was no longer even the semblance of a valid law, or lawful order which could modify the contract rate. The contract rate, therefore, under the mandate of the Supreme Court must be held to have been the rate effective on June 7, 1954."

So, too, upon the striking down of the Kansas order here involved, the Court in *Cities Service Gas Company* v. *Federal Power Commission*, supra, spoke with equal force and clarity (253 F. 2d at p. 865):

> "* * * When the United States Supreme Court struck down the Kansas order there was no longer a valid order which could modify the contract rate, and the contract rate was the rate effective on June 7, 1954."[6]

Moreover, as will be demonstrated below, Petitioners' defense flies squarely in the teeth of this Court's decision in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1955), wherein it was held that initial rates filed with the Commission are those agreed to by contract; that the Commission cannot initially fix a rate different than that agreed to by the parties, but can only review the rate and modify it after a hearing and finding of unlawfulness. Thus, this Court stated (350 U.S. at p. 344):

> "Our conclusion that the Natural Gas Act does not empower natural gas companies unilaterally to change their contracts fully promotes the purposes of the Act. By preserving the integrity of contracts, it permits the stability of supply arrangements which all agree is essential to the health of the natural gas industry. * * *"

A. It Is Well Settled That State Courts Have Jurisdiction to Determine Federal Questions Injected Defensively

Apart from the foregoing, however, Petitioners are patently in error in contending that the Supreme Court of Delaware erred in holding that the lower Delaware court has jurisdiction to determine the validity of the defense raised by them as to the legally-effective rate.

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[6] When Petitioners filed the Kansas minimum price order as part of their rate schedules, it was presumptively valid, and the Commission could do nothing else but accept it for filing. Such presumption was dispelled *ab initio* when this Court struck down the order. See *Cities Service Gas Company* v. *Federal Power Commission*, *supra*, fn. at p. 862.

That state courts have jurisdiction to determine federal questions injected defensively is too well settled to require extensive documentation. *Pratt* v. *Paris Gaslight & Coke Co.*, 168 U.S. 255 (1897); *New Marshall Engine Co.* v. *Marshall Engine Co.*, 223 U.S. 473 (1912); *State of Arkansas* v. *Kansas & Texas Coal Co.*, 183 U.S. 185 (1901). Equally well settled is the rule that a State court, in resolving a federal question such as the construction of a federal tariff, can look to the rules and decisions of a federal administrative agency. *Great Northern Ry.* v. *Merchants Elevator Co.*, 259 U.S. 285 (1922).

Contrary to Petitioners' contentions, the resolution of such federal questions by State courts will not destroy uniformity in the construction of the Natural Gas Act. Substantially the same contention was rejected by this Court in the *Great Northern* decision, wherein this Court stated (at 259 U.S. 290-1):

> "The contention that courts are without jurisdiction of cases involving a disputed question of construction of an interstate tariff, unless there has been a preliminary resort to the Commission for its decision, rests in the main, upon the following argument: The purpose of the Act to Regulate Commerce (Comp. St. § 8563 et seq.) is to secure and preserve uniformity. Hence, the carrier is required to file tariffs establishing uniform rates and charges, and is prohibited from exacting or accepting any payment not set forth in the tariff. Uniformity is impossible, if the several courts, state or federal, are permitted, in case of disputed construction, to determine what the rate or charge is which the tariff prescribes. To insure uniformity the true construction must, in case of dispute, be determined by the Commission.

"This argument is unsound. It is true that uniformity is the paramount purpose of the Commerce Act. But it is not true that uniformity in construction of a tariff can be attained only through a preliminary resort to the Commission to settle the construction in dispute. Every question of the construction of a tariff is deemed a question of law; and where the question concerns an interstate tariff it is one of federal law. If the parties properly preserve their rights, a construction given by any court, whether it be federal or state, may ultimately be reviewed by this court either on writ of error or on writ of certiorari; and thereby uniformity in construction may be secured. * * *"

B. Petitioners' Reasons for Granting a Writ Are Predicated on Distortions of the Delaware Opinion

Underlying Petitioners' arguments in support of a writ is the assumption of the answer to the very question which they have brought in issue by way of defense below. If this assumption is removed, all of Petitioners' arguments fall like a house of cards.

Thus, Petitioners erroneously assume that the Commission's acceptance for filing of the Kansas minimum price order established a legally effective rate of 11 cents. They then argue that the decision of the Supreme Court of Delaware permits Cities to collaterally attack that Commission action, which action they claim became final because Cities did not protest such acceptance. They further argue that, contrary to *Montana-Dakota*,[7] the Supreme Court of Delaware held that the lower Delaware court can change the legally effective rate on file with the Commission (Pan American Pet. p. 11 *et seq*; Columbian Pet. p. 7 *et seq*; Texaco Pet. p. 8 *et seq*).

[7] *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246 (1951).

The decision of the Supreme Court of Delaware does none of these things. In the first place, the very question brought in issue by Petitioners' defense is the significance that should be attached to the Commission's acceptance, as part of Petitioners' rate schedules, of the Kansas minimum price order. Petitioners claim that such acceptance established a legally effective rate of 11 cents. Cities, on the other hand, contends that the Commission did, in fact, and, could only accept the valid and binding contractual arrangement between the parties. The Supreme Court of Delaware simply held that the lower Delaware court can determine what was the legally effective rate in passing upon the merits of Petitioners' defense. (Pan American Appendix, p. 25a).

By relying on *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co., supra,* Petitioners imply that there is an issue here involving the reasonableness of rates on file with the Commission, or that an attempt is being made to have the Delaware court change the legally effective rate on file with the Commission. There is no issue in this case as to the reasonableness of rates on file with the Commission; nor has any attempt been made to change legally effective rates.

Petitioners' defense raised an issue as to whether Cities' claim for recovery on common law grounds is inconsistent with the legally effective rate on file with the Commission. As previously stated, the decision of the Supreme Court of Delaware simply holds that the lower Delaware court is competent to interpret the rate schedule, the Commission's rules and the federal law in order to resolve this purely legal question injected defensively by Petitioners. *Great Northern Ry. Co.* v. *Merchants' Elevator Co., supra.*

In *Montana-Dakota, supra,* plaintiff sought to attack in a federal district court the reasonableness of a rate on file with the Commission. That case simply holds that a court, *be it state or federal,* has no authority to declare a rate unreasonable and that the Commission has exclusive jurisdiction to make such determination. The case is completely inapposite, for the purpose relied on by Petitioners, since there is no such issue in this case.

II.

Petitioners' Contention That the State Court Lacks Jurisdiction Because of Section 22 of the Natural Gas Act Is Without Merit

The basic question presented below[8] (but now deemphasized in the Petitions for Certiorari) was whether the Superior Court of Delaware is deprived of jurisdiction to entertain common law actions founded in contracts and restitution simply because those contracts were filed with the Federal Power Commission as rate schedules. Relying on Section 22 of the Natural

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[8] The Petitions for Certiorari, like Petitioners' brief in the Court below, contain an intermixture of arguments on the merits and on the narrow jurisdictional question presented by the request for a Writ of Prohibition. While we are of the view that the arguments on the merits are not germane to the basic issue of State court jurisdiction, we have, out of an abundance of caution, met those arguments in the preceding section of this Brief in Opposition. The intermixture of argument by Petitioners prompted the Court below to observe (Pan American Appendix, p. 30a):

> "A great deal of argument in the defendants' briefs [Petitioners here] is directed to an attempted limitation of the issues before the Superior Court and the issues before this Court. Most of this argument seems to us to miss the point. The substantial question which emerges, in one form or another, is whether the state courts have jurisdiction to entertain the suits on the refund contracts."

Gas Act, Petitioners contended that federal courts have exclusive jurisdiction to entertain such actions. (Pan American Appendix, pp. 6a, 40a, 41a; See Columbian Petition, p. 9). This contention was properly rejected by the Supreme Court of Delaware.

Section 22 of the Natural Gas Act (15 U.S.C., § 717u) provides, in pertinent part, as follows:

> "Sec. 22. The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law, *brought to enforce any liability or duty created by,* or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder * * *" (Emphasis supplied).

Petitioners contend, in essence, that once contracts are filed with the Federal Power Commission as rate schedules, all common law rights thereunder, as such, are abrogated and such rights become part of the federal law. While conceding that Cities' causes of action were "grounded solely on common law bases,"[9] they argued that the only cause of action Cities has is one to enforce a liability or duty created by the Act, which must be brought in Federal courts (Pan American Appendix p. 43a; Petitioners' Main Brief in Support of Writ of Prohibition).

In rejecting this argument, the Court below relied on the "authoritatively settled" proposition that the Nat-

[9] Petitioners' Main Brief in Support of Writ of Prohibition, p. 12.

ural Gas Act, as such, evinced no purpose to abrogate common law contract rights (Pan American Appendix, pp. 22a-23a). *United Gas Pipe Line Company* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 338 (1955). See also, *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1955); *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 142 F. 2d 943, 954 (10th Cir., 1944). It necessarily and unavoidably follows from the *Mobile* decision that if the Act preserves the "integrity of contracts" such as those here involved, and if the right to enter into such contracts remains unaffected by the Act, the right to bring common law actions stemming from such contracts likewise remains "unaffected" by the Act.

As noted by the Supreme Court of Delaware, its conclusion that the Delaware State court has jurisdiction over the actions involved was fortified by the fact that three unsuccessful attempts had been made to remove state court actions involving substantially identical facts to the federal courts for reasons substantially identical to those pressed by Petitioners. In each of those cases, the courts held that the claims were not founded upon federal law, but, on the contrary, were founded on contracts deriving their force from state law (Pan American Appendix, pp. 25a-26a). *Cities Service Gas Co.* v. *Skelly Oil Co.*, 165 F. Supp. 31 (D.C. Del. 1958); *Northern Natural Gas Co.* v. *Cities Service Oil Co.*, 182 F. Supp. 155 (D.C. Iowa, 1959); *Pan American Petroleum Corporation* v. *Cities Service Gas Co.* (D.C. Kansas, 1959, unreported; reprinted in Appendix A hereto). In the *Pan American* case, the Court, having before it the identical contracts here in question in Case No. 914, held:

> "The Natural Gas Act imposes certain duties upon the plaintiff as an independent producer. It must file its rate schedules with the Federal Power Commission and conform with its procedures. But the source of the right of action of the plaintiff is the contract; or, in the alternative, the conduct of the defendant in modifying the contract which conduct estops it from asserting its rights under the original agreement."[10]

Moreover, as noted by the Court below, its conclusions are further supported by the fact that an action for breach of contract or restitution, on substantially identical facts, was sustained in *Natural Gas Pipeline Co.* v. *Harrington,* 246 F. 2d 915 (5th Cir. 1957), *cert. den.* 356 U.S. 957 (1958) where jurisdictional grounds of diversity of citizenship existed. That Court did not hold that liability in such suit was created by the Act. On the contrary, it clearly recognized the action as founded on common law principles.[11] (Pan American Appendix, p. 27a).

While this Court has not had occasion to pass specifically on Section 22 of the Natural Gas Act,[12] there have been numerous decisions by this Court construing similar provisions in other federal Acts which clearly

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[10] In that case, Pan American contends that Cities, by its conduct, modified the original contract.

[11] We know of no case, and Petitioners cite none, where an action for overpayments of a contract price has been brought in the federal courts on the theory that such action enforced liabilities or duties created by the Act. In this regard, it should be noted that all of the federal cases listed in Appendix J to Pan American's Petition, involve diversity of citizenship.

[12] This is apparently the Delaware Supreme Court's reason for feeling that these cases may be appropriate ones for granting certiorari. (Pan American Appendix, pp. 25a, 33a).

support the Supreme Court of Delaware's conclusions. See, for example, *Montana-Dakota, supra,* 341 U.S. at pp. 250, 257, 259, where the Court construed Section 317 of the Federal Power Act, which is identical, in all material respects, to Section 22 of the Natural Gas Act.

The federal district courts are given exclusive jurisdiction of any civil action arising under any Act of Congress relating to patents, copyrights and trade marks (28 U.S.C. § 1338). Nevertheless, actions to enforce contracts in which the subject is a patent must be brought in State courts in the absence of diversity of citizenship. *Henry* v. *A. B. Dick Co.,* 224 U.S. 1, 14-15 (1912).[13]

The key to the rule is the distinction between a *case* arising under the federal laws and a *question* arising under those laws. *Pratt* v. *Paris Gas Light and Coke Co.,* 168 U.S. 255 (1897). If the plaintiff founds his suit directly on a breach of some right created by the federal laws, he makes a case arising under those laws and only a federal court has jurisdiction; but if, as here, he founds his suit on some right vested in him by the common law, or general equity jurisprudence, he makes a case arising under state law and only a state court has jurisdiction. "* * * This is the universal rule." *A & C Engineering Co.* v. *Atherholt,* 355 Mich. 677, 95 N.W. 2d 871 (1959). See discussion in 167 A.L.R. 1114.

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[13] Anti-trust law questions have been construed as vesting exclusive jurisdiction in the Federal courts. See *Blumenstock Bros. Advertising Agency* v. *Curtis Publishing Co.,* 252 U.S. 436, 440 (1920). Nevertheless, the defense of illegality under those laws may be adjudicated by a State court in an action for breach of contract. *E Remont & Sons* v. *National Harrow Co.,* 186 U.S. 70 (1902).

The rule was applied by this Court in considering rights under gas purchase contracts in *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667 (1950), wherein this Court stated (at p. 672):

> "If Phillips sought damages from petitioners or specific performance of their contracts, it could not bring suit in a United States District Court on the theory that it was asserting a federal right. And for the simple reason that such a suit would 'arise' under the State law governing the contracts."

In like manner, Mr. Chief Justice Vinson, dissenting in part, stated (339 U.S. 670):

> "I concur in that part of the Court's judgment that directs dismissal of the cause as to Skelly and Stanolind. I have real doubts as to whether there is a federal question here at all, even though interpretation of the contract between private parties requires an interpretation of a federal statute and the action of a federal regulatory body [the Federal Power Commission]."

See also *Gully* v. *First National Bank*, 299 U.S. 109, 115, 118 (1936).

It is apparent from the above, as well as the plain language of Section 22 of the Natural Gas Act, that that Section is limited solely to causes of action seeking to enforce some liability or duty *created* by the Act. Cities' complaints, as we stated previously and as Petitioners concede, are grounded solely on common law bases. At no place in Cities' complaints is any reference made to, or reliance placed on, the Natural Gas Act or any orders, rules or regulations issued thereunder or any action taken pursuant thereto. Any questions relating to such matters came into the case

as defenses set up by Petitioners in their Answers. But, as shown above, such defenses do not oust State courts of their jurisdiction.

The foregoing, we respectfully submit, makes clear that Section 22 does not oust State courts of jurisdiction to entertain the instant suits. The rights upon which the instant suits are predicated are rights which clearly arise out of common law. Those rights existed prior to the Natural Gas Act and persist to this day, subject only to the power of the Commission to alter such rights in accordance with the Natural Gas Act. *Mobile* case, *supra*. We suggest that the test as to whether the right to bring the instant actions was created by the Natural Gas Act is to determine whether the right to maintain the action would have existed in the absence of the Act. And obviously, such right would have existed in the absence of the Natural Gas Act.[14] Stated differently, it was not the filing of the contracts with the Federal Power Commission which gave the contracts validity, or which created a right to sue for breach thereof. The filing of the contracts was merely for the purpose of notice and to permit the Commission to exercise its review function. *Mobile* made that abundantly clear.

It seems crystal clear to us that since the Act did not abrogate private rate contracts, and since natural gas companies are free, as before the Act, to set rates initially by such contracts, it is frivolous as well as tortured reasoning to contend, as do Petitioners, that

[14] Cf. *Montana-Dakota* case, *supra*, 341 U.S. at pp. 250, 257, 259.

rights are not created by such contracts, but are created by an Act which did not abrogate such contracts.[15]

The decision below simply holds that the State courts of Delaware have jurisdiction to entertain common law causes of action; and that the State courts can look to federal law to determine federal questions injected defensively and incidental to the main causes of action. We respectfully submit that the decision below presents no new or novel questions of law. On the contrary, the decision is predicated on well-settled principles of law enunciated by this Court, and follows a series of recent federal court cases uniform in their holdings on the various subsidiary matters raised by Petitioners.

All of Petitioners' arguments have a hollow ring, indeed, when viewed in the light of Cities' letter of January 21, 1954; this Court's decision striking down the Oklahoma and Kansas minimum price orders; the aforementioned Federal Power Commission's order (15 F.P.C. 1448, 1454-6) requiring refunds by Cities; the respective decisions of the Third and Tenth Circuit Courts of Appeals in the *Natural Gas Pipeline Company* and *Cities Service* cases, *supra*, holding the filing of the Oklahoma and Kansas minimum price orders to be a nullity; and the decisions of the federal district courts in the *Skelly, Northern* and *Pan American* cases, *supra*, on facts substantially identical to those here involved, holding that State Courts have jurisdiction.

[15] A statute will not be construed as taking away a common law right existing at the date of its enactment unless such a result is imperatively required. *Texas and Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U.S. 426 (1907); *Federal Power Commission v. Sierra Pacific Power Co.*, *supra*.

CONCLUSION

The judgment of the Supreme Court of Delaware is clearly correct and in accord with the determinations and applicable decisions of this Court. The petitions for a writ of certiorari, accordingly, should be denied.

Respectfully submitted,

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May 31, 1960

APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.

CIVIL ACTION NO. W-1595.

PAN AMERICAN PETROLEUM CORPORATION, *Plaintiff*,

v.

CITIES SERVICE GAS COMPANY, *Defendant*.

Memorandum Opinion

This is an action for a declaratory judgment instituted by the plaintiff, Pan American Petroleum Corporation, against the defendant, Cities Service Gas Company. The suit was originally filed in the District Court of Seward County, Kansas for the purpose of securing a declaratory judgment under *Kan. G. S.* 1949, 60-3127 to 60-3132(c), inclusive. On June 25, 1958, the defendant removed the suit to this court under the authority of 28 USC § 1441(b), basing the removal on the ground that the action was one in which the federal courts have original jurisdiction in that it is founded on the Natural Gas Act, 15 USC § 717, a claim or right arising under an Act of Congress regulating commerce. Under 28 USC § 1337, the jurisdiction of this court was invoked by the defendant. The plaintiff filed its motion to remand. This is the motion at bar. Since both parties are Delaware corporations, federal jurisdiction on the basis of diversity is absent. The sole question presented is whether the plaintiff's petition discloses upon its face a controversy between the parties with reference to a right or immunity created by the laws of the United States.

Initially, what may this court consider in determining this issue? The applicable principles of law in deciding the removability of civil actions have been clearly stated, both by the Supreme Court and the Court of Appeals of this circuit. In *Gully* v. *First National Bank*, 299 U. S. 109, 112 (1936), the court stated the following tests to be applied

in determining when a case arises "under the Constitution or laws of the United States:"

> "To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. . . . The right of immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another. . . . A genuine and present controversy, not merely a possible or conjectural one, must exist with reference thereto . . . and the controversy must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal. . . . Indeed, the complaint itself will not avail as a basis of jurisdiction in so far as it goes beyond a statement of the plaintiff's cause of action and anticipates or replies to a probable defense . . . ."

Accord, *Anderson* v. *Bingham & G. Ry. Co.*, 169 F. 2d 328, 330 (10th Cir. 1948); *Regents of New Mexico College of Agriculture & Mechanics Arts* v. *Albuquerque Broadcasting Co.*, 158 F. 2d 900, 907 (10th Cir. 1947).

These tests of federal jurisdiction for cases arising under the laws of the United States have been enumerated in the following fashion: (1) it should be kept in mind that the federal courts are courts of limited jurisdiction; (2) the right claimed must be one which will succeed on one construction of the laws of the United States but will fail on another; (3) there must be a necessity for construction of a federal statute or statutes and a real and genuine dispute or controversy between the parties as to the meaning and effect of a federal law asserted to be involved; (4) the asserted federal question must be real, substantial, and meritorious, not frivolous or a well-settled question foreclosed by previous court decisions; (5) the right itself must

be federal in its nature and not merely in its source or origin; (6) presentation of a federal question must be determined from the plaintiff's own statement of his cause of action, of which the claimed federal right must be an essential element; and (7) matters pleaded by the plaintiff in anticipation or avoidance of defenses, or matters appearing in such pleadings subsequent to plaintiff's complaint as defendant's answer or petition for removal, are entirely immaterial and cannot be considered in determining whether a federal question is presented. Annotation, What actions arise under the laws and treaties of the United States so as to vest jurisdiction of Federal Courts, 14 A. L. R. 2d 992, 1002-1003 (1950). In order to decide the issue presented, it is clear that we must analyze the contents of the plaintiff's petition alone, unaided by any matters pleaded in anticipation or avoidance of defenses to be alleged by the defendant.

From the petition, it appears that the plaintiff is an independent producer of oil and gas owning oil and gas leases in the Hugoton Field in southwestern Kansas. The defendant is in the business of transporting and selling natural gas for resale for ultimate consumption. On June 23, 1950, these parties entered into a twenty year gas sales contract for the purchase and sale of natural gas. The contract price for the gas was 8.4 cents per Mcf measured at 16.4 pounds per square inch absolute (psia) at a temperature of 60° fahrenheit. The contract provided that it was subject to all valid laws and lawful orders of all regulatory bodies having jurisdcition of the parties.

Subsequently, the State Corporation Commission of Kansas prescribed a minimum wellhead price of 11¢ per Mcf measured at 14.65 psia at 60° fahrenheit, which order became effective on January 1, 1954. On July 16, 1954, the Federal Power Commission required all independent producers, including the plaintiff, to file with the Commission rate schedules. On November 16, 1954, the plaintiff filed its schedules setting out the 11¢ per Mcf price as estab-

lished by the Corporation Commission of the State of Kansas. And on March 2, 1955, the Federal Power Commission accepted the filed rate price effective June 7, 1954. To these orders, the plaintiff did not object, nor did it invoke section 19(b) of the Natural Gas Act to prevent the 11¢ rate from becoming effective. In fact, it paid the new price without protest.

On March 22, 1954, the defendant filed its request for increased rates on gas sold by it to ultimate consumers. In support of these increased rates, it relied upon the 11¢ per Mcf price. The increased rates were allowed by the Federal Power Commission. Then on July 1, 1957, the plaintiff filed with the Federal Power Commission a notice that effective that date, the applicable price would be 11.0715¢ per Mcf. This was in conformity with the tax reimbursement clause of the Kansas severance tax act. To this increase, the defendant not only did not object, but requested as it secured a tax advantage. For all gas delivered from July 1, to November 23, 1957, the defendant paid the sum of 11.0715¢ per Mcf. But once the severance tax law was declared unconstitutional, the plaintiff no longer paid this .0715¢ increase.

As aforementioned, the defendant paid the sum of 11¢ per Mcf from January 1, 1954, to November 23, 1957, without protest. On November 24, 1957, the defendant tendered to the plaintiff the original 8.4¢ per Mcf rate, and on January 28, 1958, the defendant demanded payment from the plaintiff for the difference between the payments the defendant had made to the plaintiff and the payments which it should have made for such gas under the new contract rate.

During this period, the plaintiff assigned some of the leases subject to the original contract to 125 persons and transferred the proceeds of the gas sales to such assignees which was accomplished with full knowledge of the defendant. The plaintiff relied on the 11¢ price, drilled new wells

and reworked others. As a result of these acts, agreements, and conduct, the plaintiff contends that the contract was modified with the defendant's acquiescence and is estopped to deny that the contract was modified. These are the facts, circumstances, and contentions as disclosed by the plaintiff's petition.

Section 1441(b) authorized the removal to the United States Court of any civil action of which the district court has original jurisdiction founded on a claim or right arising under the laws of the United States. Section 1337 provides that the district courts shall have original jurisdiction of any civil action arising under any Act of Congress regulating commerce or protecting trade or commerce. And Section 1331 gives federal courts original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum of $3,000, exclusive of interest and costs, and arises under the laws of the United States. Admittedly, the jurisdictional amount is present, and the Natural Gas Act is a law of Congress regulating Commerce. 15 USC § 717. The Act regulates the transportation, sale and distribution of natural gas in interstate commerce. If the petition discloses a case or controversy arising under the Natural Gas Act, which is an essential element of the plaintiff's cause of action, and that the plaintiff's right will be supported if the Natural Gas Act is given one construction and defeated if it is given another, then the case was properly removed. If not, then the plaintiff's motion to remand should be sustained.

In the event that the case presents a close question as to whether the federal court has jurisdiction, what test should be applied in deciding whether to retain the suit, or remand it to the state court. Some courts have held that on a motion to remand, every doubt should be resolved against remand. *Bon* v. *Midwest Refining Co.*, 30 F. 2d 410, 413 (D. Wyo. 1929); *affirmed*, 43 F. 2d 23 (10th Cir. 1930). Cf. *Bradley* v. *Halliburton Oil Well Cementing Co.*,

100 F. Supp. 913, 916 (W. D. Okla. 1951). Other federal courts have held that all doubts are to be resolved against the removal of the cause. *Kansas* v. *Bradley*, 26 Fed. 289 (D. Kan. 1885); *Winsor* v. *United Air Lines*, 159 F. Supp. 856 (D. Del. 198); *Aetna Ins. Co.* v. *City of Malben*, 102 F. Supp. 126 (E. D. Mo. 1952); *John Hancock Mutual Life Ins. Co.* v. *United Office & Professional Workers of America*, 93 F. Supp. 296 (D. N. J. 1950). This rule is based on the presumption against jurisdiction as the powers of the federal courts are of a limited nature. Such being the case, the jurisdiction of federal courts is to be strictly construed. *Shamrock Oil & Gas Co.* v. *Sheets*, 313 U.S. 100, 108 (1941); *Healy* v. *Ratta*, 292 U. S. 263, 270 (1934).

Another rule was formulated in *Boatmen's Bank of St. Louis* v. *Fritzlen*, 135 Fed. 650, 655 (8th Cir. 1905), which case originated in this district. With respect to the applicable test to apply in determining whether the federal court had jurisdiction of a removal suit, the court stated:

> ". . . the true rule is that motions to remand and for removal should be decided, not by the existence of doubts, but by the preponderance of the facts, the law, and the reasons which condition them, in view of the fact that the right to invoke the jurisdiction of the federal court is a valuable constitutional right, and an erroneous affirmance of the claim to that right may be corrected by the Supreme Court upon a certificate of the question of jurisdiction, while an erroneous denial of the claim is remediless."

See *Chicago, R. I. & Pacific Rd. Co.* v. *Kay*, 107 F. Supp. 895, 906 (W. D. Iowa 1952); *Cyclopedia of Federal Procedure*, Vol. 2, § 3.135, pp. 398-399 (3rd Ed. 1951). Before the application of the test to be used in deciding whether this court has jurisdiction of this removal proceeding, let us examine the nature of the present action.

The original contract entered into between the parties for the sale and purchase of dry natural gas was executed in this state and was to be performed here. This court must apply the substantive law of state in which it sits. *Erie* v. *Tompkins*, 304 U. S. 64 (1938). The Kansas Supreme Court has twice construed this agreement to be a Kansas contract. See *Stanolind Oil & Gas Co.* v. *Cities Service Gas Co.*, 181 Kan. 526, 313 P. 2d 279 (1957); *Stanolind Oil & Gas Co.* v. *Cities Service Gas Co.*, 178 Kan. 202, 284 P. 2d 608 (1955).

But the original agreement is not the source of the instant controversy. The question centers on the 11¢ modification entered by the State Corporation and filed with the Federal Power Commission by the plaintiff—all without objection from the defendant. First with respect to the 11¢ order entered by the Kansas Corporation Commission, it is clear that under the Natural Gas Act, the states have no power to regulate the sale of natural gas in interstate commerce by independent natural gas producers. *Cities Service Gas Co.* v. *State Corporation Commission of Kansas*, 355 U. S. 391 (1958); *Natural Gas Pipeline Co.* v. *Panoma Corporation*, 349 U. S. 44 (1955); *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672 (1954). By the very terms of the contract, the Kansas Corporation Commission, as a regulatory body having no jurisdiction over the parties, did not have the power to modify the terms of the original agreement. In itself, the State Corporation Commission order was ineffectual.

Also; the filing of a unilateral contract change with the Federal Power Commission is not sufficient to change Pan American's contract with Cities Service. This was settled by the Supreme Court in *United Gas Pipe Line Co.* v. *Mobile Gas Corporation*, 350 U. S. 332 (1956). If the contract in question was a "going" rate agreement, then the Federal Power Commission could change the price as the parties would have so agreed by contract. *United Gas Pipe Line Company* v. *Memphis Gas, Light and Water*

Division, 358 U. S. — (1958). But the contract in question is not of such a nature. It is one of a fixed price as was construed in the *Mobile* decision. The Commission has the power under Section 5(a) of the Natural Gas Act to change the contract rate upon finding that the contract rate is unreasonable or unjust so that it would have an adverse effect on the public interest. *Federal Power Commission* v. *Sierra Pacific Power Company*, 350 U. S. 348, 353 (1956). No such action was taken by the Commission in the present case.

In view of these decisions, it is clear that there is no federal question presented relative to the order of the Kansas Corporation Commission raising the contract price to 11¢, and the unilateral rate change by the Federal Power Commission. Since the law is settled, there is no federal question. This rule was aptly stated in *Regents of New Mexico* v. *Albuquerque Broadcasting Co.*, 158 F. 2d 900, 907 (10th Cir. 1947), in which the court noted:

> "It is well settled that the lack of substantiality in a federal question may appear, either because it is obviously without merit, or because its unsoundness so clearly results from previous decisions of the Supreme Court as to foreclose the subject, or, as it is sometimes stated, there must be a Federal question, not in mere form but in substance, and not in mere assertion but in essence and effect. The reason is plain. If the asserted Federal right is clearly and obviously without merit, the case cannot possibly arise under Federal law."

To escape the effect of this rule, the defendant contends that this court has original jurisdiction since the question presented is whether the 8.4¢ contract rate or 11¢ "tariff" rate as scheduled with the Commission is the effective rate. The argument is predicated on the theory that the rate filed is to be treated as though it were a statute binding

upon the parties before the court, and as such a tariff, the construction of its effect presents a federal question. In support of this contention, the defendant cites *Bernstein Bros. Pipe & Machinery Co.* v. *Denver & Rio Grande W. Rd. Co.*, 193 F. 2d 441 (10th Cir. 1951). The question involved in that decision was whether one tariff rate or another applied to the transportation of portable heating units. With respect to the proper rate to be charged, the Court noted:

> "The amount of a transportation charge for goods shipped in interstate commerce is not a matter of private contract between the parties. The shipper and carrier are alike bound by the established and published tariff rates. . . . No contract of the carrier can reduce the amount legally payable or release from liability, a shipper who has assumed an obligation to pay the charges. Nor will any act or omission of the carrier estop or preclude it from enforcing payment of the full amount under the tariff by a person liable therefor."

Under the Interstate Commerce Act, there is but one rate; and no room for private contracts. Is the Natural Gas Act of the same nature? In *United Gas Pipe Line Co.* v. *Mobile Gas Corporation*, 350 U. S. 332 (1956), the sole question presented was whether under the Natural Gas Act a regulated gas company furnishing gas to a distributing company could change the contract rate simply by filing a new rate schedule with the Federal Power Commission, when objected to by the distributing company. Initially, the court noted the difference between the Natural Gas Act and the Interstate Commerce Act, by stating:

> "In construing the Act, we should bear in mind that it evinces no purpose to abrogate private rate contracts as such. To the contrary, by requiring contracts to be filed with the Commission, the Act expressly recognizes that rates to particular customers may be set by

individual contracts. In this respect, the Act is in marked contrast to the Interstate Commerce Act, which in effect precludes private rate agreements by its requirement that the rate to all shippers be uniform, a requirement which made unnecessary any provision for filing contracts."

Then the court held that one party could not unilaterally change the terms of the original contract by filing a "rate schedule" under Section 4(d). The only effect of the Act is "a prohibition, not a grant of power.". Section 4(d) "says only that a change *cannot* be made without the proper notice to the Commission; it does not say under what circumstances a change *can* be made."

The precise question is whether the original contract was modified. This alleged modification occurred as a result of circumstances which were independent of the provisions of the Natural Gas Act. These circumstances are questions of fact to be determined in order to declare what the present contract is. As stated by the Supreme Court in the *Mobile* case, ". . . the Act provides no 'procedure' either for making or changing rates; it provides only for *notice* to the Commission of rates established by natural gas companies and for *review* by the Commission of those rates. The initial rate-making and rate-changing powers of natural gas companies remain undefined and unaffected by the Act."

The case of *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U. S. 667 (1950), sheds some light on the issue herein presented. The Supreme Court in reversing the lower court held, that the attempted injection of a federal question as to the Natural Gas Act was merely an anticipatory defense and did not constitute an essential element of the plaintiff's cause of action. Federal jurisdiction was denied. In so holding, the court stated:

> "If Phillips sought damages from petitioners or specific performance of their contracts, it could not bring suit in a United States District Court on the theory that it was asserting a federal right. And for the simple reason that such a suit would arise under the State law governing contracts."

In addition to the fact that the plaintiffs' cause of action was based on a contract, the court noted that since the trend was towards the contraction of the jurisdiction of the federal courts in cases "arising under . . . the Laws of the United States," the case should not be considered as one arising under federal law. In support of this statement, the court said:

> "With exceptions not now relevant Congress has narrowed the opportunities for entrance into federal courts, and this Court has been more careful than in earlier days in enforcing these jurisdictional limitations."

In this case, the defendant makes the same contentions as were made by the plaintiffs in the *Phillips* case, i.e., that the regulations promulgated by the Commission under the Natural Gas Act had the force and effect of federal law. The Supreme Court rejected this argument. Likewise, in the instant case, it is so rejected.

The Natural Gas Act imposes certain duties upon the plaintiff as an independent producer. It must file its rate schedules with the Federal Power Commission and conform with its procedures. But the source of the right of action of the plaintiff is the contract; or in the alternative, the conduct of the defendant in modifying the contract which conduct estops it from asserting its rights under the original agreement. See *Anderson* v. *Bingham & Garfield Ry. Co.*, 169 F. 2d 328 (10th Cir. 1948); 14 ALR 2d 992 (1950).

Assuming that a contract may be modified through spe-

cific conduct or acquiescence, the defendant contends that the question of estoppel is in itself a federal question under the regulations of the Natural Gas Act, and its provisions under which they are issued. In support of this argument, it cites *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U. S. 173 (1942). It is true that the Court in the *Sola* case found the "doctrine of estoppel" to constitute a federal question as it was "in conflict with the Sherman Act's prohibition of price-fixing." The rationale of that opinion was that there can be no valid estoppel to deny the validity of a patent if the estoppel would result in a contravention of federal anti-trust laws. The court concluded its opinion with the statement that "rules of estoppel which would fasten on the public as well as the petitioner the burden of an agreement in violation of the Sherman Act must yield to the Act's declaration that such agreements are unlawful, and to the public policy of the Act which in the public interest precludes the enforcement of such unlawful agreements." As the Sherman Anti-Trust Act renders unlawful all agreements and private contracts which in any way, unreasonably restrain competition in interstate commerce, such contracts are in violation of federal law. Therefore, the formation of such agreements through the application of the doctrine of estoppel presents a federal question.

If the rate schedule filed in the present suit was analogous to the Interstate Commerce Act, then Cities Service's contention is proper. See *United States* v. *Western Pacific Rd. Co.*, 352 U. S. 59, 76 (1956). But in the construction of rate schedules filed with the Federal Power Commission, under the Natural Gas Act, this is not so. The act specifically provides for the approval of private contracts, which rates, by their very origin, will vary. There is no published rate, or tariff. The only issue is whether the original contract, or a new agreement created through conduct and acquiescence, is in effect. The doctrine of estoppel in no fashion precludes the effectiveness of any federal statute.

The only limitation on the right of the parties to contract for the purchase and sale of natural gas is Section (5)(a) which allows the Federal Power Commission to declare such contracts unjust and unreasonable if violative of public interest. There is no such element in the present case. The sole question is whether the parties are bound by the terms of the original agreement, or have by their conduct modified the first agreement, are operating under the modified contract.

A suit to enforce the terms of a contract, as allegedly modified by the acts and conduct of the parties, is not one arising under the laws of the United States within the meaning of the jurisdictional statutes. Where it appears from the complaint that the plaintiff does not assert a claim or right arising out of federal law, that the alleged federal claim is not an essential element of the plaintiff's cause of action, that the federal law allegedly involved is merely colorable, and that it is immaterial as to the effect of the construction of the Natural Gas Act upon such claim, the suit is not one arising under the laws of the United States.

The allegations of the petition charging the defendant with the modification of the contract merely tenders an issue of fact whether the agreement has been so modified. The petition did not present any issue or controversy in respect to the validity, construction, or effect of the Natural Gas Act. It did not set forth any right or immunity which would be supported if the Act be given one construction or effect and defeated if given another. The right or immunity upon which the suit is predicated is the right of the parties to contract with each other. This is not a federal right.

In conclusion, from an examination of the plaintiff's petition, unaided by the petition for removal or matters pleaded in anticipation or avoidance of defenses, it appears that the right upon which the cause of action is founded is not federal in nature, but is grounded on the premise

of the formation of a modified contract through the acts, conduct and acquiescence of the parties in this action. This right, or cause of action, will neither succeed or fail on the construction of a federal statute, or regulation promulgated pursuant to such statute. Despite the existence of such federal statutes, the suit is based on the theory that a new agreement has been entered into by the parties.

In view of the foregoing this case be, and it hereby is remanded to the District Court of Seward County, Kansas, the defendant to pay all of the costs incurred in this court by reason of removal.

(Signed) DELMAS C. HILL,
Chief Judge.

U. S. DISTRICT COURT
DISTRICT OF KANSAS } *ss.:*

I hereby certify that the foregoing is a true copy of the original on file in this court and cause.

HARRY M. W..SHINGTON,
Clerk.

By /s/ EUGENIA RUDY,
Deputy.

Dated 12/31/58.

FILE COPY

IN THE

Supreme Court of the United States

October Term, 1959

No. 80

PAN AMERICAN PETROLEUM CORPORATION, a Delaware Corporation, *Petitioner*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, and CITIES SERVICE GAS COMPANY, a Delaware Corporation, *Respondents*.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Delaware

PETITIONER'S REPLY TO BRIEF OF CITIES SERVICE GAS COMPANY IN OPPOSITION

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IN THE

Supreme Court of the United States

October Term, 1959

No. 914

PAN AMERICAN PETROLEUM CORPORATION, a Delaware Corporation, *Petitioner*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, and CITIES SERVICE GAS COMPANY, a Delaware Corporation, *Respondents*.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Delaware

PETITIONER'S REPLY TO BRIEF OF CITIES SERVICE GAS COMPANY IN OPPOSITION

Opposition to review is predicated upon (1) inaccurate claims or inferences as to Federal Power Commission action; (2) assertions, contrary to views of the courts below and others, as to absence of novel questions; and (3) argument upon the merits not addressed to substantial questions of grave concern below, particularly as to interrelation of *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956),

and the filed rate doctrine enunciated in *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951).

I. Cities Service Gas Company (Cities), continuing collateral objections to Federal Power Commission (Commission) actions, claims the Commission has somehow erased its formal acts of 1954-1955 accepting filed rates, and blessed filing of "refund" suits in state courts (Brief in Opp., pp. 6, 10, 14, 23). To the contrary:

(a) On April 28, 1958, by Notice in its Docket No. R-168, the Commission requested pleadings upon carefully specified questions relating to the state minimum price orders, and to unprotested Commission actions, three years earlier, making filed rates effective for sales in the Hugoton Fields of Kansas and Oklahoma (see 23 Fed. Reg. 2973, May 2, 1958). Pleadings were filed by scores of persons including Cities and Petitioner; oral argument was had on July 29, 1958; *and, the matter is now pending before the Commission.* Meanwhile, Cities continues to press vigorously for judgments in the state courts. Thus, review obviously would benefit Commission consideration of questions which have arisen directly from this Court's invalidation of state pricing orders.

(b) *Cities Service Gas Co.* v. *FPC*, 255 F. 2d 860 (10th Cir. 1958), cited as reflecting the Commission's position (Brief in Opp., p. 10), had an entirely different jurisdiction fact pattern, and antedates FPC Docket No. R-168. The very differences between statutory procedures followed in that case, and collateral actions in this and other pending cases, illustrate the questions at issue. There, Cities itself attacked a tendered rate by timely protest and application for rehearing at the

Commission. Thereafter, Cities urged, and the court held, that the Commission had accepted 11 cents as a filed rate, and that Cities was aggrieved by such action, and, therefore, could seek timely review under Section 19(b) of the Act. Here, being out of time under the Act, Cities is urging that state courts have jurisdiction to entertain attacks on rates long ago filed and accepted. In fact, the Commission brief which Cities quotes (Brief in Opp., p. 10) was modified by the Commission itself by the filing of a Supplemental Memorandum to limit its statements to the facts there involved, and apparently to preclude any inference that it was passing upon the merits in dissimilar cases where filed rates had been unprotested (see 255 F. 2d 860, 865).* Despite this, Cities now argues that a holding on the merits in that case, properly brought under Section 19, is dispositive of entirely different questions of jurisdiction of state and federal courts under Section 22.

II. As in Docket No. R-168, Cities presses belated objections to Commission actions of 1954 and 1955 (Brief in Opp., pp. 6, 9, 10). Cities thereby not only lays bare its reason for seeking to erase these Commission actions collaterally, but also underscores its concession below—that rights of these parties and others

* Compare Cities' allegations with the Commission view that a letter order accepting and making rates effective "constitutes an order under Section 4(d) of the Act," reflected in *Continental Oil Co.* v. *FPC*, 236 F. 2d 839, 841 fn. 3, 842 (5th Cir. 1956); and Commission rulings that tendered rates so accepted and made effective are the "legal rates"; that there "is no valid distinction between rates made effective under different circumstances"; that rates so accepted and made effective "represent the only rates which the producer-suppliers . . . may charge, and which [their customer] may pay"; and that such filed rates can be changed only under Section 5 of the Act. Re *Tennessee Gas Transmission Company*, 14 F.P.C. 860, 861 (1955).

similarly situated *now* flow from filed rates, not from contract (see App. to Pet., p. 12a). Cities also underscores the holding below that ". . . the lower Delaware court can determine what was the legally effective rate . . .", (Brief in Opp., p. 15). Cities' admission and the holding, thus, squarely raise the heretofore undecided question of jurisdiction of state courts to decide, in light of Section 22, *not* merely a defense, but causes of action resting on duties created by the Act and Commission actions thereunder.

Cities argues that these novel questions are "well-settled." This was not the conclusion of the courts below (see App. to Pet., pp. 25a, 33a). The problem is one of intrusion of state courts into the several areas over which the Commission, the United States Courts of Appeals, and the United States District Courts, respectively, have primary and exclusive jurisdiction under Sections 19 and 22 of the Act. Cities, however, asserts that the crucial question—whether suit in collateral actions may be brought upon alleged contract rights in conflict with filed rates—is to be resolved by "the test" of whether such action could have been brought in the absence of the Act (Brief in Opp., p. 22). This begs the question. *Obviously, in the absence of the Act and Commission action thereunder,* common law actions could have been brought. Of concern to the courts below, and other state and federal trial and appellate courts, are rights of the parties and jurisdiction of the courts, *after* the Commission, under Section 4 of the Act, accepts and makes effective tendered rates. Cities admits claimed contract rights are subject to modification by Commission action under the Act (Brief in Opp., p. 22). Thus, questions at issue here, and in state and lower federal courts, turn upon such

Commission action in 1954 and 1955, and the impact thereof in barring jurisdiction of state courts to entertain actions such as Cities has brought.

III. As below, Cities stops far short of analysis of applicability, where administrative and statutory remedies have *not* been followed, of (a) the *Mobile* holding, and (b) the filed-rate doctrine of the *Montana-Dakota* case. As shown in our Petition, three federal courts have reasoned that filed rates assailable under *Mobile*, nevertheless, may become immune to collateral attack where there has been no timely administrative protest or judicial review (see Pet, pp. 18-19, and fn. 7, pp. 19-20, citing discussion by the United States Courts of Appeals for the District of Columbia, the Tenth and Third Circuits). As here, lower courts, after *Mobile*, thus, have been concerned as to what remedies, if any, remain to a person who has failed to follow administrative and statutory procedures, and later seeks to attack Commission action making filed rates effective. Cases upon which Cities relies (*Cities Service Gas Co.* v. *FPC*, 255 F. 2d 860 (10th Cir. 1958); *Natural Gas Pipe Line Co. of America* v. *FPC*, 253 F. 2d 3 (3rd Cir. 1958); *Phillips Petroleum Co.* v. *FPC*, 258 F. 2d 906 (10th Cir. 1958); *Kerr-McGee Oil Industries* v. *FPC*, 260 F. 2d 602 (10th Cir. 1958)) were all *timely* review proceedings under Section 19(b). Such is not the case here, nor in the other collateral actions, which raise questions of state-federal jurisdiction not involved in *Mobile*. Similarly, Cities' effort to narrow the *Montana-Dakota* bar by limiting it to rates "approved" as "reasonable" illustrates the error below (Brief in Opp., pp. 15-16). This Court held that the bar to collateral attack applies *whether* a filed rate is "fixed" *or* "merely accepted" by the Commission (see Pet.,

pp. 15-16, and fn. 8, p. 20). Cities' misreading thus underscores misinterpretation of the case below and the need for review.

IV. Cities' discussion of applicability of Section 22 of the Act (Brief in Opp., pp. 16-24), also highlights the gravity of state courts' assumption of powers vested in the Commission and federal courts. Cities conceded below that "the only legal rate is the filed rate." (App. to Pet., p. 12a). Since filed rates are the *only legal* rates, and the *legal* rights and duties of parties, therefore, flow from the filed rates, state courts cannot entertain actions under any guise which seek to enforce rights or liabilities so created by filed rates, in the light of the explicit language of Section 22 placing "exclusive jurisdiction" in the federal courts. Thus, this is not a case of barring "removal" because a question "may" be raised on defense, nor of actions "relating to" rights ancillary to patents, copyrights, etc. (Brief in Opp., pp. 18-19). The record and opinions show that at the time of the ruling on Motions for Summary Judgment raising the jurisdictional issue, Cities (the plaintiff) had, in its own pleadings, recharacterized its actions by conceding that its claimed legal rights must rest upon the filed rates under the Act, whatever those rates may be. Necessarily, any alleged contract right has been superseded or overridden by the legal, filed rates. Thus, Cities' current theory can stand *only if* action by a regulatory commission accepting and making effective tendered rates as the filed rates, has no legal significance whatsoever, does not control the right to a particular rate, and may be negated by state courts in collateral proceedings. This is the holding below, and it is contrary to the most fundamental principles of administrative and rate regulatory law.

State and federal courts and the Commission now face the very issues here presented; and scores of persons, whose rates are subject to Commission jurisdiction, are being subjected to lengthy, costly trials and appeals in collateral attacks upon their filed rates. Early resolution of the jurisdictional questions at issue here is sorely needed to assure uniform results and to provide guidance in administration of the Act.

CONCLUSION

For the foregoing reasons, and those set forth in our Petition, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

PAN AMERICAN PETROLEUM CORPORATION, *Petitioner*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, AND THE HONORABLE ANDREW D. CHRISTIE, SITTING AS A JUDGE OF THAT COURT, AND CITIES SERVICE GAS COMPANY, *Respondents*.

On Writ of Certiorari to the Supreme Court of the State of Delaware

BRIEF FOR PETITIONER PAN AMERICAN PETROLEUM CORPORATION

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BRIEF FOR PETITIONER PAN AMERICAN PETROLEUM CORPORATION

OPINIONS BELOW

The opinion of the Superior Court of the State of Delaware in and for New Castle County (R. 8-21) is reported at 155 A. 2d 879. The opinion of the Supreme Court of the State of Delaware (R. 33-46) is reported at 158 A. 2d 478.

JURISDICTION

The judgment of the Supreme Court of Delaware was made and entered on March 18, 1960 (R. 47-48). Petition for Writ of Certiorari was filed on May 6, 1960, and was granted on June 13, 1960 (R. 780). Jurisdiction of this Court rests upon 28 U.S.C. § 1257(3). The issue of Petitioner's rights and immunities under the Natural Gas Act was raised by its Answer (R. 620, 623-627, 634), by Motion for Summary Judgment (R. 656), and by Petition for Writ of Prohibition in the Supreme Court of Delaware (R. 1, 4-5, 6).

QUESTION PRESENTED

Where, after tender of a rate for filing under the Natural Gas Act, the Federal Power Commission formally accepts, files, and makes such rate effective, do the courts of the several states thereafter have jurisdiction

(a) to declare the Commission decision making such filed rate effective to be a nullity;

(b) to substitute a different price for the filed rate; and

(c) to enforce an alleged, unfiled agreement which changes, retroactively, the filed rate made effective by the Commission decision.

STATUTES INVOLVED

Pertinent provisions of the Natural Gas Act (52 Stat. 821, 15 U.S.C. 717, *et seq.*) are set forth in the Appendix, *infra*, pp. 59-65. Pertinent provisions of the Federal Power Commission Regulations Under the Natural Gas Act, having force and effect of statute, are also set forth in the Appendix, *infra*, pp. 66-71.

STATEMENT

Jurisdiction of the Federal Power Commission (Commission) over producers' rates for sales of natural gas in interstate commerce for resale was upheld on June 7, 1954. *Phillips Petroleum Co. v. State of Wisconsin, et al.*, 347 U.S. 672 (1954). The rate for such a sale is the subject of the present controversy.

1. *Federal Power Commission action.* Immediately after the *Phillips* decision, the Commission implemented the requirement of Section 4(c) of the Natural Gas Act (the Act) that every natural-gas company file and keep open for public inspection, schedules of rates and charges. To that end on July 16, 1954, the Commission amended its Regulations under the Act, and directed producers, including Petitioner, to file schedules of rates in effect on June 7, 1954, including statements showing actual billings, copies of contracts, supplements or agreements, and rules or regulations affecting rates or charges.[1] The Commission also prohibited change of any rate in effect on or after June 7, 1954, unless notice of such change is filed under Section 4(d) of the Act and the Regulations. (See 18 C.F.R. § 154.94).

To comply with these Regulations and Section 4(c) of the Act, on November 16, 1954, Petitioner tendered the rate of 11 cents per thousand cubic feet (Mcf), at 14.65 pounds per square inch absolute (p.s.i.a.), in effect on June 7, 1954, for Petitioner's sale to Cities Service Gas Company (Cities) from leases in the Hugoton Field,

[1] The amendments to the Regulations were set forth in Commission Order No. 174, subsequently modified by Order No. 174-A, and now appear at 18 C.F.R. § 154.91, *et seq.* Pertinent sections are set forth in the Appendix, *infra*, pp. 66-71.

Kansas (R. 591-599).[2] Petitioner transmitted to the Commission a copy of a contract between Petitioner and Cities dated June 23, 1950 (R. 285-308); copies of all agreed-upon amendments thereto (R. 309-484); a copy of an order of the State Corporation Commission of Kansas prescribing a minimum price of 11 cents per Mcf for sales from the Hugoton Field on and after January 1, 1954 (R. 485-491); and a sample billing statement showing the tendered rate of 11 cents per Mcf (R. 496-498).

On November 16, 1954, Petitioner also gave notice to Cities of the tender of the 11 cent rate to comply with the Regulations, forwarding to Cities a copy of Petitioner's Letter of Transmittal to the Commission which identified in detail all documents tendered by Petitioner (Affidavit, R. 758-759). As required by Section 4(c) of the Act, Petitioner also kept its tendered filing open for public inspection at its General Offices in Tulsa, Oklahoma.

No protest of the 11 cents rate was made under Section 154.27 of the Regulations, nor was objection made under any other provisions of the Commission's Rules.[3]

On January 26, 1955, the Commission duly convened and, among other matters, considered Petitioner's tendered rate (R. 635, 636). The minutes of this meeting of the Commission show that the Commission construed the tendered rate schedule as providing for a rate of 11 cents

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[2] Petitioner's corporate name then was Stanolind Oil and Gas Company. The name was changed to Pan American Petroleum Corporation on February 1, 1957 (R. 282-284). Petitioner is referred to by both names in the record.

[3] Section 154.27 of the Regulations provides that comments of any purchaser concerning any filing pursuant to Part 154 of the Regulations, of which the sections applicable to producers are a part, "should be submitted within 15 days after the date of filing." The section specifically does not "limit" any right to file other protests and complaints under the Rules.

per Mcf.[4] The minutes record that upon the basis of documents tendered and this construction thereof, the Commission entered under "Summary of Independent Producers Rate Filings—Rates in Effect on June 7, 1954" a rate of 11 cents per Mcf for the sale involved (R. 639). The minutes further record that the Commission voted to accept the tendered rate of 11 cents per Mcf for filing; the rate of 11 cents thus was made effective as the rate accepted by the Commission as the filed rate, and was thereupon entered in the Commission's public files and records as such (R. 636).

At the same time, the Commission ordered its Secretary to give notice of this action (R. 637). Notice was by letter order dated March 2, 1955 (R. 640).[5] After advising that the tendered filing had been "accepted for filing," the Commission gave notice that any change of the rate would constitute a change of rate within the meaning of Section 4(d) of the Act and Section 154.94 of the Regulations, requiring a new filing with the Commission; and that acceptance did not constitute "approval" of any rate or recognition of any contractual obligations, and was without prejudice to findings or orders by the Commission in any pending or future proceedings. Petitioner's filing was designated as Petitioner's FPC Gas Rate Schedule No. 84 and Supplement Nos. 1-77 thereto (R. 641-646).

No protest of this action was made, nor did Cities file an application for rehearing under Section 19(a) of the Act.

Cities paid Petitioner the 11 cents per Mcf filed rate for gas delivered up to July 1, 1957, when the rate was

[4] Minutes of such Commission acts are "public files and records of the Commission which are available for public reference . . . ." (See 18 C.F.R. § 1.36(c)(6)).

[5] Such letter orders are also public files and records of the Commission open to public inspection (See 18 C.F.R. § 1.36(c)(3) and (6)).

changed to 11.0715 cents per Mcf. This rate of 11.0715 cents per Mcf was tendered to the Commission by Petitioner as a change of the rate, as required by Section 4(d) of the Act, the Regulations, and the Commission's letter order of March 2, 1955. Increase of the then effective rate of 11 cents per Mcf was necessary to enable Petitioner to collect from Cities reimbursement due for 65% of payments by Petitioner of a Kansas gas severance tax of 1% (R. 647). Petitioner's notice of this change set forth the then effective rate of 11 cents upon which the 1% was to be calculated, and the resulting increased rate of 11.0715 cents per Mcf to be effective on and after July 1, 1957 (R. 648).

On June 28, 1957, immediately prior to tender of this rate to the Commission, Petitioner served a copy of its filing upon Cities (R. 648), but Cities made no protest of or objection to the tendered rate.

At its meeting of July 24, 1957, the Commission considered the tendered change of rate (R. 651). The minutes of that meeting show that the Commission construed the rate schedule and filings as providing for a rate of 11 cents per Mcf prior to change; for an increase of .0715 cents based upon the percentage of that effective 11 cents rate; and for a new rate of 11.0715 cents per Mcf after the change of rate (R. 653). The minutes show that upon such constructions the Commission entered under "Summary of Independent Producer Rate Filings—Changes in Rate Filings Previously Reported to the Commission," the then effective rate of 11 cents per Mcf; the increase of .0715 cents per Mcf; and as the rate effective after increase, the rate of 11.0715 cents per Mcf (R. 653). Upon consideration, the Commission voted to accept the increased rate for filing and at the same time voted to waive the thirty days' notice requirement and permit the increased rate of 11.0715 cents per Mcf to be effective as of July 1, 1957;

and the tendered change thus was entered in the public files and records of the Commission (R. 651).

As directed by the Commission, the Secretary, by letter order dated August 19, 1957, gave notice of acceptance of the 11.0715 cents rate for filing (R. 654). The same order designated the change of rate as Supplement No. 80 to Petitioner's Rate Schedule No. 84 (R. 655). Shortly thereafter, by letter dated August 29, 1957, Petitioner mailed to Cities a copy of the Commission's letter order (R. 763).[6]

Cities made no objection to the Commission's action, nor did it file an application for reconsideration under Section 19(a).

Cities paid this filed rate of 11.0715 cents per Mcf for gas delivered from July 1, 1957, through November 22, 1957.

2. *Cities' Attack Upon the Filed Rate.* On January 29, 1958, Cities made demand upon Petitioner for the difference between 11 cents per Mcf at 14.65 p.s.i.a. and 8.4 cents per Mcf at 16.4 p.s.i.a. for all gas delivered from January 1, 1954 to November 22, 1957 inclusive, with interest thereon at 6 per cent per annum from the dates of "over payments." Cities referred to the order of this Court on January 20, 1958, reversing a judgment of the Supreme Court of Kansas which had held that state's minimum price order valid. Cities asserted that invalidation of the state order entitled it to refunds on the ground of involuntary payment, but Petitioner refused this demand.

On June 25, 1958, Cities filed a complaint in the Superior Court of the State of Delaware in and for New Castle

[6] Although such orders are public documents open for public inspection under the Act and Commission's Rules, Cities on May 15, 1955, by form letter stated that under the Act and the Regulations, it could pay only the rate made effective by Commission action. Therefore, Cities had then requested Petitioner to furnish additional copies of such Commission orders and communications for Cities' convenience in maintaining its own private files (R. 760).

County, demanding judgment for refunds and alleging that it was entitled to recovery upon the basis of an alleged "refund contract" and theories of restitution and unjust enrichment (R. 232-237). This "refund contract" was alleged to have been created by (1) a letter Cities had sent to Petitioner on January 21, 1954, stating that Cities had then decided to pay the state minimum price, that such payments were involuntary, and that Cities expected to recover on that ground any payments occasioned by the state order in the event of its invalidity (R. 609-610); (2) a letter Petitioner had addressed to Cities on January 27, 1954, offering to agree to refund without interest any overpayments occasioned by the state minimum price order should that order be declared invalid in an adjudication binding and controlling on Petitioner (R. 611); and (3) notations on vouchers attached to checks issued by Cities, which referred to Cities' own letter of January 21, 1954 (R. 234-235). The complaint as initially drawn made no reference to exercise of jurisdiction over the rates by the Commission, nor to Commission action making Petitioner's tendered rates effective under the Act.

Cities next moved for a summary judgment, basing its motion not only upon its earlier pleading but also upon exhibits attached to its motion (R. 278-281). Included in these exhibits were a copy of Petitioner's FPC Gas Rate Schedule No. 84, certified by the Records Officer of the Commission (R. 281, 282-554), and similarly certified copies of other documents (R. 589-607).

Next, on May 12, 1959, Cities amended its complaint to show, *inter alia*, that it operates an interstate gas pipeline system and is engaged generally in purchasing gas for transportation and sale in interstate commerce for resale, "in furtherance whereof" it entered into a sales contract with Petitioner (R. 619-620).

3. *Petitioner's Motion for Summary Judgment.* On May 26, 1959, Petitioner answered in the light of this

amended complaint and Cities' Motion for Summary Judgment (R. 620-635). Petitioner denied the existence of any "refund contract" and that any payments of the filed rate constituted "overpayments" (R. 620, 622-623),[7] and also set forth the facts of tender of the rates of 11 cents and 11.0715 cents per Mcf to the Commission (R. 620, 623, 625); Commission action making those rates effective under the Act (R. 620, 624, 625); and the absence of protest of, objection to, or petition for judicial review of Commission actions (R. 620, 626). Petitioner then challenged the state court's jurisdiction on the grounds that Cities sought to annul and set aside Commission action by unlawful collateral attack, based upon an alleged "refund contract" not on file with the Commission, and actually sought enforcement of claimed rights under a rate for a regulated sale (R. 620, 626-627, 634).

[7] For its Answer, and assuming it could now be lawful for a state court to go behind Commission actions to re-examine a "foundation" of a filed rate, Petitioner, thus, was and is, prepared to show that Cities still would not be entitled to recovery because the unfiled letter and notations alleged to be a "refund contract" do not constitute such an agreement, in fact or in law; that if contract law *is* applied, the relationship has been modified by acquiescence and estoppel; and all payments, as a matter of law, are deemed to be voluntary and hence those made for gas delivered prior to June 7, 1954 are unrecoverable (R. 620, 627-634). Subsequent to this Answer, a certificate covering the sale, under Section 7 of the Act, was issued by the Commission on December 2, 1960, with a proviso that "issuance of this certificate does not constitute a determination of what was or is the price for the sale by Pan American to Cities Service, and is without prejudice to whatever determinations may be reached on the dispute between Pan American and Cities Service concerning this matter, or the rights of the parties in regard to this matter." This correctly leaves unchanged the earlier Commission actions under the filing procedures of Section 4 in 1954, 1955, and 1957, accepting, filing, and making effective Petitioner's tenders, which are the statutory procedures for and duties of the Commission for establishing filed rates under the Act, as were detailed in the Answer (R. 620, 624, 626).

On June 8, 1959, Petitioner also moved for summary judgment (R. 650-657), and submitted affidavits and exhibits supporting its allegations as to Commission action and absence of jurisdiction in a state court because federal regulation barred a coercive common law action upon which Cities was relying (R. 656). In opposing this motion, Cities asserted that even if its original complaint was defective in not reciting with specificity the facts as to the filed rate "such defects have been cured and supplied by defendants' own allegations" (Brief, R. 771, 777-778). After discussion of its "refund contract" theories, Cities ultimately took the position that "[t]he only lawful rate is the filed rate with the Federal Power Commission . . ." (Brief, R. 771, 775), and agreed that no rate may be claimed by a purchaser "as a legal right" that is "other than the filed rate, whether fixed or accepted by the Commission, and not even a court can authorize commerce in a commodity on other terms," but argued that the "filed" rate was the price of 8.4 cents at 16.4 p.s.i.a. (R. 775).

Simultaneously, in support of its own Motion for Summary Judgment, Cities told the court that it sought "merely to enforce its right to a refund of the payments made in excess of the contract rate which is necessarily the same rate as is fixed in [Petitioner's] rate schedule" (Brief, R. 764, 766); that the "filed rate" is 8.4 cents per Mcf at 16.4 p.s.i.a. (Brief, R. 764, 767); that the "rate fixed by defendant's rate schedule is binding upon plaintiff and defendant and upon this Court, with the force and effect of federal statute" (Brief, R. 764, 767); that there may be no sale of natural gas at any rate other than the filed rate (Brief, R. 764, 768); and that once the state court had determined the filed rate, that state court "is bound, as a matter of law, to enforce that rate" (Brief, R. 764, 770).

At this juncture, the trial court denied defendants' motions identical to Petitioner's, which were then pending in companion cases to which the schedule of procedure in

the action against Petitioner had been bound by stipulation (See R. 617-619).[8]

4. *The Superior Court's Decision.* The trial court first found that "both parties agreed that as to the period after July 16, 1954, at least no rate may be asserted as a legal right that is other than the filed rate." The court then considered the question of whether it was without jurisdiction in the light of Section 22 of the Natural Gas Act, vesting "exclusive jurisdiction" in the United States District Courts of "all suits in equity or actions at law, brought to enforce any liability or duty, created by" the Act "or any rule, regulation, or order thereunder" (R. 8, 12-13).

The court concluded that the actions were based "on contracts and/or restitution," but went on to say that the plaintiff could not recover if its claimed right was contrary to the Act or orders thereunder (R. 13). The court held that if what it conceived to be the filed rate and a contract price were different in amount, it had no jurisdiction because in that event Cities' common law actions would be inconsistent with the Act; but that if the two were the same in amount, the court had jurisdiction to entertain the common law counts and to render judgment on *them*. To the court, this conclusion meant that it would be necessary to interpret "federal law and regulation" and "the filings," but that a decision upon the merits would not involve a decision in an action brought to enforce a liability or duty created by the Act, or Commission actions thereunder, because it would be based on common law counts (R. 14). The court then concluded that it had jurisdiction to pass upon defendants' motions, and that decision upon the merits necessitated deciding the status of the

[8] The companion cases are actions by Cities against Texaco, Inc., and Columbian Fuel Corporation, Petitioners in Nos. 81 and 82, respectively, in this Court.

Kansas order prior to July 16, 1954,[9] and "a determination of the rate filed with the FPC after that date" (R. 14).

On the latter question, the court again noted that "[b]oth parties agree that as to the period after July 16, 1954, the only legal rate is the filed rate 'and not even a court can authorize commerce in a commodity on other terms . . .'" (R. 18). The court then stated the ultimate question to be ". . . what rate was legally filed?" (R. 18). The court then proceeded to hold that actions of the Commission could not change an "original contract rate," and, since the Kansas order subsequently was held void, "the only lawful filed rate is the contract rate" (R. 21). Thereupon, the defendants' motions were denied.

5. *The Supreme Court Decision.* Petitioner, with the defendants in the consolidated companion cases, then filed a joint petition for writ of prohibition in the Supreme Court of Delaware, challenging jurisdiction of the state court over the subject matter of the pending actions (R. 1-7), and averring "that jurisdiction of claims concerning rates under the Natural Gas Act is exclusively invested in the federal courts, or in the Federal Power Commission, and that the courts of this state have no jurisdiction thereof" (R. 6). Cities, intervening, filed an answer to the Supreme Court's rule to show cause (R. 24-29).

The Supreme Court of Delaware correctly concluded that the Act requires the filing of both rate schedules and rates under regulations prescribed by the Commission (R. 33, 35); found that Petitioner had submitted such a schedule,

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[9] The trial court ruled that the Kansas order was *void ab initio*, rejecting contentions of defendants that it remained valid until the Federal Power Commission actually pre-empted the field to exercise jurisdiction on July 16, 1954, by issuing Order No. 174 (R. 14-18). *Cf. Buck* v. *People of State of California*, 343 U.S. 99 (1952); *Missouri Pacific Railway Company* v. *Larabee Flour Mills Co.*, 211 U.S. 612, 623 (1909).

and in connection therewith, tendered 11 cents per Mcf as its June 7, 1954 filed rate; recognized that, by vote at a meeting duly convened, the Commission had so construed that rate schedule as providing for a June 7, 1954 price of 11 cents per Mcf; recognized that thereupon the Commission accepted and filed 11 cents per Mcf as Petitioner's June 7, 1954 filed rate; and recognized that the Commission had given notice of these actions (R. 33, 35-37). However, the court then held that because of invalidity of the state order, the rate schedule "provided for" an 8.4 cents price instead of the 11 cents rate, and in effect, and for that reason, the Commission's acceptance of the 11 cents rate for filing was a "nullity" (R. 45).

The court thus rested its ultimate conclusion upon determinations that the Commission's acts no longer had binding legal effect; that the voiding by the court of the Commission's acts resulted in a "filed" rate which was the same in amount as the alleged contract price; that the rate and contract price thus were not inconsistent; and that actions to enforce that rate, therefore, were maintainable in a state court (R. 38-40). The court concluded that since the Act does not abrogate private contracts as such, "a gas producer and distributor" remain free to agree to change their rates, absent a proceeding before the Commission to regulate the rate, and may agree to refunds in private unfiled contracts deriving force from state law (R. 41). Looking only at the complaints, the court then said that there was no "attempt to 'adjudicate' a proper rate," and that there was no collateral attack upon a filed rate because "reasonableness" was not in issue (R. 41, 44). Apparently concluding that rights and liabilities thus were controlled by "common law obligations," the court concluded that jurisdiction over the rates remained in the state courts (R. 46).

Final judgment was entered on March 18, 1960 (R. 47), and on the same date stay of judgment pending final order

of this Court "in any certiorari proceedings" was entered (R.-48).

SUMMARY OF ARGUMENT

Petitioner's rates of 11 cents and 11.0715 cents per Mcf (at 14.65 p.s.i.a.) were accepted, filed, and made effective as filed rates under the Natural Gas Act. Alleging that the rate should have been 8.4 cents per Mcf at 16.4 p.s.i.a., Cities has belatedly brought suit in the Delaware state court.

Cities' action must fall into but one of three categories, none of which may be maintained in a state court:

(1) As a common law action to enforce an alleged unfiled contract for a rate not on file with the Commission, the jurisdiction of the state court is defeated by the fact that the Commission by virtue of Section 4 of the Act has exclusive, primary jurisdiction over the rate to be charged by Petitioner and over all changes of that rate. No unfiled agreements, or even state commission orders, can infringe upon this exclusive jurisdiction of the Commission or change a filed rate.

(2) As an action to review and set aside orders of the Commission accepting and filing Petitioner's tendered 11 cent and 11.0715 cent rates, the action would come directly within the purview of Section 19 of the Act, which provides a complete and exclusive procedure for timely statutory review by the United States Courts of Appeals. This provision precludes state court jurisdiction in a collateral action to set aside, on any ground whatsoever, acts of the Commission accepting and filing a tendered rate.

(3) As an action to enforce a rate on file with the Commission, the action would come directly within the purview of Section 22 of the Act which provides, *inter alia*, that the District Courts of the United States shall have "exclusive jurisdiction . . . of all suits in equity and actions at law

brought to enforce any liability or duty created by . . . this chapter or any rule, regulation, or order thereunder." This provision of the Act precludes the possibility of state court jurisdiction of an action to enforce any rate on file with the Commission.

I. A filed rate can be changed only through the procedures of Sections 4 and 5 of the Act and cannot be changed retroactively in a collateral proceeding:

A. Section 4 requires tender of a rate and Commission action accepting and filing *that* rate before it may be legally charged for a regulated sale. Under comparable provisions of the Federal Power Act, this Court has held that no rate may be claimed as a legal right that is other than the filed rate, "whether fixed or merely accepted by the Commission," and a court cannot "authorize commerce in the commodity on other terms." *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 251 (1951). Federal regulation thus cannot be supplanted by state court efforts to effect a change of a filed rate by means of "judgment" upon claimed rights under either state or federal law: (*Cf. Texas and Pacific Railway Co.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426 (1907)). The force and binding effect of Petitioner's filed rates thus derive from the Act and Commission action, and may not be changed by state court interpretation of a pre-existent state order or alleged contract.

B. The state courts erred in interpreting *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956), to mean that state courts retain some jurisdiction to determine a "proper" rate for a regulated sale and to enforce such rate as though it were a "filed" rate. By so doing, a state court would unlawfully change a filed rate retroactively as well as prospectively. Under the Act, there is always but *one* rate currently effective—specific and definite in cents per Mcf as determined by

the Commission at the time of acceptance and filing. The Act and Regulations prohibit *any* change of that effective rate, even where a different price in cents per Mcf otherwise might be charged under terms of a contract, unless and until the change of rate—equally specific and definite in cents per Mcf—has been made effective by Commission action after tender under Section 4(d). As the court below found with respect to Petitioner's tender (R. 36), the Commission formally passes upon the specific tendered rate in cents per Mcf (R. 639), votes upon rejection or acceptance (R. 636), and issues notice of its action (R. 640). In addition, the Commission has provided administrative procedures for protest of a tendered rate, and upon challenge, defers acceptance or passes upon objections, including claims that a tendered rate is not in accord with some pre-existing contract price (*Cf.* R. 222, 224). The specific rate so accepted is the only legal, binding rate, fixing rights of both buyer and seller, and then may not be changed retroactively, but only prospectively under Section 4 or Section 5. (*Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 618 (1944)).

C. Commission actions accepting and making effective filed rates were subject to review only in the United States Courts of Appeals, which under Section 19 of the Act have exclusive jurisdiction, subject to review by this Court, to set aside or modify Commission actions. If there is no timely protest and application for reconsideration under Section 19(a), and no timely petition for review under Section 19(b), Commission action accepting and making a tendered rate effective becomes, as here, final and unassailable collaterally. This has been the construction of the Act and Commission actions both before and after the *Mobile* decision, and clearly means that a state court cannot assume in a collateral proceeding years later, that Commission action, now final under the Act, is "null." Section 19(b) provides the exclusive procedure for such attack upon and modification of Commission action.

II. No matter what interpretation is placed upon its action or what theory is claimed in justification, the state court is without jurisdiction:

A. The courts below have recognized that the filed rate can be the only legal rate, binding both upon the parties and a court (R. 18, 41). Necessarily then, all rights, liabilities, or duties of buyer and seller always flow from orders under the Act *after* a filed rate is effective by Commission action. Enforcement of claimed rights, either "at law" or "in equity," with respect to the regulated rate, then is exclusively within the federal District Courts' jurisdiction under Section 22. The state courts seem to have sought to avoid this bar by determinations that Commission actions are "nullities"; that the "filed" rate, therefore, is equal to a "contract rate" asserted by Cities; and that enforcement by the state court of Cities' claimed rights to the latter "rate" thus would be permissible application of state law, and not inconsistent with overriding federal law or outstanding agency action. By amendment of its complaint, the plaintiff below had shown the status of the parties and of Petitioner's sale as subject to regulation under the Act (R. 619); next relied upon portions of the filed rate schedule and excluded other portions in seeking summary judgment (R. 278, 281); and then called upon the state court to enforce its claims under an alleged "filed" rate of 8.4 cents at 16.4 p.s.i.a. (R. 766, 770). Where the state court then must conclude, as was found necessary below (R. 14, 19, 20), that its jurisdiction to "enforce" a rate is dependent upon a declaration by it that some specific Commission action upon the rate—action by the agency in the exercise of its regulatory jurisdiction—is "null," then it is obvious that the federal scheme of regulation is paramount over the entire subject matter of rates. Jurisdiction lies only where it has been specifically vested by the federal statute prescribing a system of regulation of such subject matter—judicial

enforcement of claimed rights under a rate for the regulated sale could only be in a federal court under Section 22.

B. The process whereby the state courts seek to avoid the ban of Section 22 thus is but a dismantling of the federal regulatory scheme. If a state court purports to declare the 11 cents and 11.0715 cents filed rates to be "nullities," it is entertaining a collateral attack and usurping jurisdiction of the federal Courts of Appeals under Section 19; if it purports to enforce an alleged 8.4 cents as the "filed rate," it is usurping the jurisdiction of the federal District Courts under Section 22; and if it purports to enter judgment for "restitution" of payments at the filed rates, it is not only violating the ban on retroactive change, but also usurping the Commission's jurisdiction under Sections 4 and 5 over prospective changes of the filed rate. In the circumstances, the plaintiff below was fully aware of its remedies to protest a tendered 11 cents rate and to challenge Commission acceptance through the Commission's Rules and Regulations and Sections 19(a) and 19(b),[10] but now it mounts belated, collateral attacks in a state court. Enforcement of such claims by a state court would destroy all certainty and finality heretofore accorded to and derived from rates effective by Commission action. The state court, not the Commission, would become the paramount forum of regulation, changing filed rates by its "judgment." State commissions cannot so regulate these rates,[11] and state courts, likewise, must be excluded by federal pre-emption.

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[10] See *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F. 2d 860 (10th Cir. 1958), *cert. den. sub. nom.*, *Magnolia Petroleum Co.* v. *Cities Service Gas Co.*, 358 U.S. 837 (1958), and R. 658-667, 670-677, 682-683, 697-698.

[11] *Natural Gas Pipe Line Co. of America* v. *Panoma Corp., et al.*, 349 U.S. 44 (1955); *Cities Service Gas Co.* v. *State Corporation Commission of Kansas*, 355 U.S. 391 (1958).

ARGUMENT

I. UNDER THE NATURAL GAS ACT, THE RATE ACCEPTED AND FILED BY COMMISSION ACTION MAY NOT BE CHANGED RETROACTIVELY OR PROSPECTIVELY IN A COLLATERAL PROCEEDING.

Throughout the opinions below run two obvious but basic misconceptions. The first is as to the finality accorded Commission action filing a rate, in any subsequent, collateral proceedings; and the second is as to the pervasive paramountcy of federal rate regulation to the complete exclusion of state jurisdiction.

A. Filed rates fix rights and liabilities which may not be collaterally modified by alleged contract claims

This Court has not had occasion to consider the question of collateral attack upon a rate filed under the Natural Gas Act, but similar questions have arisen under other statutes.[12] The fundamental principle then has often been stated: a rate filed with and effective by action of a regulatory commission may not be modified collaterally by a court. A basic reason for the principle has been recognized as often: exercise of such jurisdiction by a court would destroy comprehensive, continuing commission regulation of the rate under the uniform procedure prescribed by statute.

The same principle applies to rates filed under the Natural Gas Act. Powers of natural-gas companies to agree upon prices *prior* to filing do *not* empower a state

[12] As noted in *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 616 (1944), detailed procedures of Sections 4 and 5 are a "conventional form" of rate regulation. This form is based upon the earlier experience in federal regulation of rates, primarily under the Interstate Commerce Act. See *Hope Natural Gas Co.* v. *Federal Power Commission*, 196 F. 2d 803 (4th Cir. 1952); *Hope Natural Gas Co.* v. *Federal Power Commission*, 134 F. 2d 287 (4th Cir. 1943), rev'd other grounds, 320 U.S. 591 (1944).

court thereafter to change filed rates, such as Petitioner's, by reference to state law. The Delaware courts, while correctly concluding that the filed rate *is* the *only* rate binding upon the parties, erred at the outset by not recognizing that *any* change of the rate accepted and filed by the Commission, retroactively or prospectively, by enforcement of the court's conclusions under either state or federal law would be unlawful collateral modification.

1. Immunity of a filed rate from such collateral revision is exemplified by *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951), involving construction of the Federal Power Act, which, like the Natural Gas Act, did *not* abrogate private contracts as such. (See *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956)).

Background of the case is pertinent. A purchaser had brought an action in a federal District Court, seeking to set aside filed rates and to recover damages. The rates in question initially had been agreed-upon by the plaintiff's predecessor and the defendant, and thereafter contracts "were filed with and accepted by the Federal Power Commission." 341 U.S. at 248. The plaintiff alleged that rates made effective not only were "unreasonably high" but also were void because put into effect by fraudulent conduct. Upon both grounds, a claim was asserted under the Federal Power Act. The District Court found the contracts void and the rates unreasonable, and gave judgment to the plaintiff. The Court of Appeals reversed, holding the District Court was without jurisdiction.

This Court, thereafter, held that since claims of rights under the Federal Power Act were alleged, the District Court had power to decide whether the claims constituted a cause of action maintainable in a federal court, but *also* held that a purchaser

". . . can claim no rate as a legal right that is other

> than the filed rate, whether fixed or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms." (341 U.S. at 251).

To an argument that an exception to the filed rate principle should be made because of allegations that "fraud" and "deceit" underlay a rate, the Court replied that even though an action on such grounds might have been maintainable under state law *prior* to enactment of the Federal Power Act, the federal statute could not be the basis of such action. A relationship existing with sanction of the Commission, in the exercise of its jurisdiction under the federal statute, was held to override such presumptions of "fraud" which might have been drawn under state law. Concluding that the District Court could not "adjudicate" the issues tendered to it, this Court affirmed the Court of Appeals on these grounds.

Mr. Justice Frankfurter, joined by Mr. Justices Black, Reed, and Douglas, apparently disagreed only upon dismissing the complaint, stating that under the circumstances, the Federal Power Act might provide a basis for civil recovery after reference of specific issues to the Commission, "the body primarily charged with administration of the Act." 341 U.S. at 265. Even then, however, relief would not be under "the diverse and conflicting State law," and the Act and Commission powers would remain paramount. The agency's outstanding orders could not be ignored in such a collateral action because

> ". . . the legality of rates so filed is not conditioned upon the Commission's approval. Unless they are challenged, either by an interested party or on the Commission's initiative, the filed rates become the legal rates." (341 U.S. at 255-256)

As *Montana-Dakota* illustrates, bar to collateral change of a filed rate is not limited to precluding a court from entertaining an attack upon "reasonableness," as assumed

below (R. 33, 44). It *also* precludes collateral attack based upon alleged illegality under state law of contracts or fraud, of a rate filed by the Commission under a statute that does not abrogate private contracts, as such. Neither legal nor equitable claims thereafter can have foundation in conventional theories of invalidity of commercial transactions under state law, but can flow only from the filed rates under the federal statute. Even if a claim could be asserted with respect to a filed rate, action could be brought only in the federal court having jurisdiction under the federal statute, and even that court could *not* adjudicate a claim requiring it to set aside a filed rate collaterally.

2. This Court there applied the principle often upheld in earlier attempts to revise federal filed rates by collateral actions. From such actions has come the doctrine that a filed rate fixes rights exclusively, regardless of what (1) may have been the relationship of the parties *prior* to filing of that rate, and (2) concepts of "conventional" law that might have governed rights and liabilities in the absence of a federal regulatory statute and of the filed rate.

Brief reference to such cases highlights this paramount nature of the filed rate, brushed aside as irrelevant below. In the past, the device of seeking enforcement of alleged but unfiled agreements to avoid a filed rate thus was long ago condemned, on the grounds that a rate for a regulated transaction becomes legally operative only through compliance with statutory procedures, and that where an effective schedule is on file, the effective rate therein is exclusive. (See *Kansas City Southern Railway Co.* v. *C. H. Albers Commission Co.*, 223 U.S. 573 (1912)). Similarly, it was recognized that a filing procedure exists so that documents accepted and filed by the regulatory commission without objection may always provide notice of the effective tariff or rate; that the filing company, users of

a service, and the public all are "charged with notice" of that effective rate; and that the duty of the user of a service to pay, and the right and obligation of the regulated company to collect, flow from that effective rate. (See *Berwind-White Coal Mining Co.* v. *Chicago & Erie Railroad Co.*, 235 U.S. 371 (1914); *Louisville & Nashville Railroad Company* v. *G. A. Maxwell*, 237 U.S. 94 (1915)).[13] The cases decided during the period of attack upon paramount regulation under the Interstate Commerce Act, thus provide an extensive index to diverse theories evolved to modify filed rates collaterally, the theories apparently being equalled only by decisions preserving regulation under the statute.[14]

3. The state courts below, therefore, were not faced with an entirely novel attack having no historical parallel,

[13] See also 3 Merrill on Notice § 1118, pp. 23-24 (1952 ed.).

[14] Thus, filed rates supersede liabilities allegedly growing out of state statutes, and are not to be abrogated by exacting penalties for violations of such statutes, *The Gulf, Colorado & Santa Fe Railway Co.* v. *Hefley & Lewis*, 158 U.S. 98, 102 (1895). The rates filed under the federal statute, likewise, override alleged, but inconsistent contracts, *Texas & Pacific Railway Company* v. *Mugg & Dryden*, 202 U.S. 242 (1906); *James C. Davis* v. *R. L. Cornwall*, 264 U.S. 560 (1924); mistake or accident in quotation of a filed rate, *Kansas City Southern Railway Co.* v. *J. M. Carl*, 227 U.S. 639 (1913); and obligations or rights allegedly growing out of torts, *John W. Keogh* v. *Chicago Northwestern Railway Co.*, 260 U.S. 156 (1922); and form the basis for any cause of action where there is a dispute over compensation for a service for which a rate is on file. See *Crancer* v. *Lowden*, 315 U.S. 631, 635-636 (1942); *Lowden et al.* v. *Simonds-Shields-Lonsdale Grain Co.*, 306 U.S. 516 (1939); *Bernstein Bros. Pipe & Machinery Co.* v. *Denver R. G. W. R. Co.*, 193 F. 2d 444 (10th Cir. 1951); *Armour & Co.* v. *Atchison, Topeka & Santa Fe Railway Co.*, 254 F. 2d 719 (7th Cir. 1958); *Thompson* v. *St. L.-S. F. Ry. Co.*, 318 F. 2d 166 (8th Cir. 1954). For similar application of the bar to collateral attack upon a rate filed with a state commission, where action was brought to enforce a private, unfiled agreement, see *Steele* v. *General Mills*, 329 U.S. 433 (1947).

regardless of ingenuity with which the attack may have been mounted initially. In *Texas & Pacific Railway Co.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426 (1907), the question of jurisdiction of a state court to entertain and decide a cause of action attacking a rate on file under the Interstate Commerce Act was reviewed. After consideration of the plenary power of the federal agency, this Court held that the statute prohibited exercise of jurisdiction by a state court to "effect a change of a filed rate" by means of "judgment" in a collateral proceeding. (204 U.S. at 440). In detail and without limitation to the issue of "reasonableness," the necessities for denying such state court jurisdiction to preserve the federal scheme of regulation were reviewed. This Court there gave the still pertinent admonition that even an express statutory preservation of common law rights, where *consistent* with agency action, could not be construed as foundation for such state jurisdiction, because the Act could not be thus held "to destroy itself" by permitting collateral revision of agency action by a state court. (204 U.S. at 446-447).

With reference to that case, this Court also recently held that because of the filed rate principle, rates filed under the Motor Carrier Act may not be overturned by enforcement of an alleged common law right to "reasonable" *past* rates. *T.I.M.E., Inc.* v. *United States*, 359 U.S. 464 (1959). The majority of this Court concluded that failure of Congress to delegate reparation powers to the Interstate Commerce Commission showed intent to insure motor carriers in their rights to filed rates. Absence of that power in the commission's jurisdiction over motor carriers, does not mean that the same filed rates may otherwise be modified retroactively in the courts by enforcement of a claim resting on common law theory.

4. The Delaware courts thus have failed to recognize that a filed rate fixes *continuing* rights and liabilities in a regulated transaction, and similarly erred in concluding

that *after* Commission action, common law claims may collaterally change the charge legally enforceable in the regulated transaction. The filed rate has been so held to be paramount under comparable provisions of the Federal Power Act as to rates "merely accepted" for filing and where a common law relationship preceded effectiveness of the filed rate, *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951); and the same doctrine has been held by the lower federal courts to be equally applicable to rates filed under the Natural Gas Act itself. See *McClellan* v. *Montana-Dakota Utilities Co.*, 104 F. Supp. 46 (D.C. Minn. 1952), aff'd, 204 F. 2d 166 (8th Cir. 1953); *Mondakota Gas Co.* v. *Montana-Dakota Utilities Co.*, 103 F. Supp. 666 (Mont. 1951).

Against this background—in which the conclusion has been stated many times that unless the filed rate is so preserved, a comprehensive regulatory structure could dissolve into diversities of collateral, state enforcement of alleged contract, tort, fraud, or other liabilities—the state courts erroneously concluded that the Natural Gas Act accords a filed rate no such immunity.

B. Section 4 vests in the Commission jurisdiction and duties of determining whether to reject, or accept and make effective, a rate at the time of tender, and prohibits change of the rate so filed except through compliance with the Act

The state courts have assumed that because the Act permits private agreements, an alleged contract price may be collaterally enforced to change the specific rate filed and made effective by Commission action under Section 4. This is incompatible with the statute, and is based upon misconceptions of statutory and administrative procedures.

1. Under Section 4, the Commission has the jurisdiction and duty of determining at the time any rate is tendered, whether to accept and make that specific rate effective under Section 4, or whether to reject that rate as being

unsatisfactory or improper under its regulations and the statute. See *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 347 (1956); *Warren Petroleum Corp.* v. *Federal Power Commission*, 282 F. 2d 312 (10th Cir. 1960). A company and its purchasers can do business only upon the basis of what the Commission decides in so passing upon the tendered rate. When the Commission acts; accepts and makes effective that tendered rate, it is never assumed to have been "derelict in its duties," but as is the case with any administrative body, the presumption always is that the Commission performs the functions necessarily required for the exercise of this statutory duty. See *Federal Power Commission v. Union Producing Co.*, 230 F. 2d 36, 40 (D.C. Cir. 1956); *United States* v. *Rock Royal Co-op. Inc.*, 307 U.S. 533, 567-568, fn. 35 (1939); *Adams* v. *Nagle*, 303 U.S. 532, 540-544 (1938); *United States* v. *Morgan*, 313 U.S. 409, 422 (1941); *United States* v. *Chemical Foundation*, 272 U.S. 1, 14-15 (1926); *Ross* v. *Stewart*, 227 U.S. 530, 535 (1913); *Lumberman's Mutual Casualty Co.* v. *Industrial Acc. Comm.*, 29 Cal. 2d 492, 501, 175 P. 2d 823, 829 (1946); *Valier Coal Co.* v. *Department of Revenue*, 11 Ill. 2d 402, 143 N.E. 2d 35 (1957).

Charge of the specific rate tendered always awaits the specific action taken by the Commission at the time it passes upon the tendered rate under Section 4, and that action and nothing else, thereafter controls the legal relationship of buyer and seller until there is a change of rate under Sections 4 or 5. As fully illustrated by certified minutes and documents, the Commission formally performs this duty under Section 4 (R. 635-639). Whether contracts are involved or not, it considers the tendered rate in formal session; by its construction of documents tendered, makes its determination of the then applicable rate in exact cents per Mcf to be chargeable under Section 4; and then decides either to reject the tender, to accept it for filing making the tendered rate effective as the filed rate, or, in the case of a change of rate, to suspend it.

Rejections are frequent and arise from this construction of the tendered documents at the time of tender, on the Commission's own initiative or after protest lodged by a purchaser. Acceptances likewise result from the Commission's construction, and such Commission action obviously could result from what may be an erroneous conclusion in the view of one person or another. But, unless the Commission's action under Section 4 is set aside on timely review, it is binding upon buyer, seller, the Commission, or a court in all collateral proceedings thereafter, and the rate so filed may be changed only prospectively under Sections 4 or 5 of the Act.

Reference to these details of the statutory procedures demonstrates the basic errors of the state courts.

2. Filing procedures were reviewed in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *United Gas Pipe Line Co.* v. *Memphis Light, Gas & Water Division*, 358 U.S. 103 (1958), both cases reaching the courts through Section 19(a) and 19(b) of the Act. Neither case involved collateral modification, but both emphasize that it is the rate made effective by Commission action under Section 4 which is binding and unless actually set aside on timely review, supersedes any antecedent contract claim to some other rate. In *Mobile*, while recognizing that the Act permits "the relations between the parties to be established initially by contract," this Court noted that the Act requires Commission supervision of all such contracts, which "to that end must be filed with the Commission and made public . . ." Section 4(d) of the Act, therefore, provides that no change of a rate, whether *ex parte* or by contract, can become an effective rate unless and until there is compliance with filing requirements (350 U.S. at 339).

As the courts below found (*e.g.*, R. 10-11, 36), the Commission has never been merely a federal depository for contracts deriving force from state law. To the end that

all persons are on notice that the specific, tendered rate is reviewed, the Commission has called attention in Section 154.100 of its Regulations to "the right to reject any rate schedule or material submitted for filing." (18 C.F.R. § 154.100).[15] To the end that any interested person may be heard on objection to the tendered rate, the Commission has also provided in Section 154.27 that comments of any purchaser upon any filing under Part 154 of the Regulations should be submitted within 15 days after the filing; and the Commission's Rules further make ample provision for filing of both informal and formal complaints (18 C.F.R. § 1.6); petitions, including petitions for declaratory orders (18 C.F.R. § 1.7); petitions for intervention (18 C.F.R. § 1.8); and both informal and formal protests (18 C.F.R. § 1.10) (all of which were procedures available to Cities in 1954, 1955 and 1957).

Whether such protests or complaints are lodged or not, the Commission reviews submitted material, and in formal session passes upon the tendered rate, and by formal vote either rejects the rate or accepts the tender and thereby permits that rate to become the effective rate under the Act. Thereupon, the rate so accepted and filed cannot be changed retroactively under any section of the statute. (*Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 618 (1944)). Change can be prospective only by (1) tender of a change of rate under Section 4 that is duly accepted and filed, or by (2) subsequent change by Commission order under Section 5.

3. This elaborate statutory and administrative procedure under Section 4 cannot be supplanted by the state court. If the Delaware courts were correct, the federal

[15] See also *Alabama-Tennessee Natural Gas Co.* v. *Federal Power Commission*, 203 F. 2d 494 (3rd Cir. 1953); *Atlantic Seaboard Corp.* v. *Federal Power Commission*, 201 F. 2d 568 (4th Cir. 1953); *Mississippi River Fuel Corp.* v. *Federal Power Commission*, 202 F. 2d 899 (3rd Cir. 1953).

Commission's actions under Section 4 would be but useless acts, and constructions of the Act and Commission orders by the federal Courts of Appeals for more than twenty years have been totally wrong.

The Commission's jurisdiction to decide myriad questions at the time of its review of a tendered rate has often been upheld. Because its action upon the tender under Section 4 is binding in establishing the specific, effective rate subject to judicial review but not to retroactive change, it must so pass upon the rate when tendered, and is empowered to determine questions pertinent to acceptance or rejection. Accordingly, the Commission decides whether the tendered rate complies with its own regulations (see *e.g., Mississippi River Fuel Corp.* v. *Federal Power Commission*, 121 F. 2d 159 (8th Cir. 1941); *Mississippi River Fuel Corp.* v. *Federal Power Commission*, 202 F. 2d 899 (3rd Cir. 1953)); whether to defer decision upon its formal acceptance or rejection after protest until after further review of conflicting contentions of buyer and seller (see *e.g., Texas Gas Transmission Corp.* v. *Shell Oil Co.*, 363 U.S. 263 (1960)); whether to impose a "condition" upon acceptance, which may be done *if* the company is clearly and specifically apprised of the exact, specific rate in the condition (see *e.g., Sunray Mid-Continent Oil Co.* v. *Federal Power Commission*, 270 F. 2d 404 (10th Cir. 1959)); and whether it would be error to accept and file the tendered rate (see *e.g., United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956)).

In *Phillips Petroleum Co.* v. *Federal Power Commission*, 258 F. 2d 906 (10th Cir. 1958), the scope of this primary jurisdiction under Section 4 was held to include jurisdiction to determine just what rate in cents per Mcf the Commission is accepting for filing under Section 4 (*e.g.*, R. 639). That jurisdiction includes the making of any preliminary determinations—*e.g.*, exactly what is to be the effective rate, or whether the then effective rate can be modified by

filing a change of the rate under Section 4(d). Determinations of this character are an inherent "incident" of the Commission's primary jurisdiction over the rate under Section 4 (258 F. 2d at 907).

The Commission's action under Section 4, solemnized as it is by formal minutes and letter orders, stands as final and controlling. Whether after so considering the tender in its session, the Commission has decided to accept or reject the specific rate tendered, and whether that action under Section 4 then is subject to timely reversal under Section 19 as in *Mobile* or affirmance as in *Memphis*, there is at all times an outstanding Commission action under Section 4 under which some *specific* rate is effective as the filed rate for every regulated sale, as a result of Commission exercise of its duties and jurisdiction under that section of the statute.

4. The courts below apparently were under the impression that change to a different rate *level* in cents per Mcf, such as Cities seeks, would be possible without compliance with Section 4(d) and the Regulations (18 C.F.R. § 154.94 (a) and (c)). Under that view, the filed rate presumably could be changed automatically or collaterally without a tender of the new rate to the Commission and its action thereon. This is forbidden both by the Regulations and the Act, long construed by the federal courts and the Commission itself to mean that the filed rate, a specific figure in cents, can not be changed to any other figure or rate *level* except after action by the Commission, as permitted by Sections 4 and 5.

For Commission rulings, the courts below were referred to a Commission order rejecting tender of a rate increase specifically provided by a contract, because the tender was conditioned upon possible invalidity of a prior higher rate already on file (R. 703, 705, 706, 707-725). In its rejection of the tender, the Commission held (R. 705):

> " . . . there can be only one effective rate for the gas sold within the meaning of Order No. 174-B, and because Section 4(d) of the Natural Gas Act requires that any change in rate state plainly the change to be made and the time when the change will go into effect. The conditional nature of your rate change filings do not meet this requirement."

The courts below also were referred to the Commission construction that once a tendered rate is accepted for filing under Section 4, that rate may not be set aside collaterally or retroactively. For example, in *Re Tennessee Gas Transmission Company*, 14 F.P.C. 860 (1955) (R. 726-733), with reference to tendered rates so accepted for filing as here *without* condition or suspension, the Commission held:

> "There is no valid distinction between rates made effective under different circumstances. The basic underlying fact is that they are presently effective rates in either instance. Such rates may not be attacked collaterally." (R. 728-729)
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> . . . . . .
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> "The producer-suppliers rates, the reasonableness of which intervenors seek to probe here, are rates and charges which have become effective pursuant to filed rate schedules. The rates set forth in the effective rate schedules are legal rates. They represent the only rates which the producer-suppliers to Tennessee may charge, and which Tennessee may pay. Such rates being fixed and certain cannot now be changed except in proceedings instituted under Section 5(a) of the Natural Gas Act." (14 F.P.C. at 861-862 and R. 732).

The Courts of Appeals also construe the Act to mean that even though under contract law a "right" to a price by "operation" of some contract clause may be claimed collaterally, such "right" is not legally controlling because the specific filed rate, then effective under the Act, remains binding. *Mississippi Power & Light Co.* v. *Memphis Natural Gas Co.*, 162 F. 2d 388 (5th Cir. 1947), *cert. den.*, 332 U.S.

770 (1947). See also *Cities Service Gas Producing Co.* v. *Federal Power Commission*, 233 F. 2d 726 (10th Cir. 1956), *cert. den.*, 352 U.S. 911 (1956). After *Mobile*, the Courts of Appeals have reached the same conclusion, even where it has been urged that under *Mobile* the rate to be charged may be changed to a different contract price without the filing of a change of rate under Section 4(d). *Bel Oil Corp.* v. *Federal Power Commission*, 255 F. 2d 548 (5th Cir. 1958), *cert. den.*, 358 U.S. 804 (1958); *Episcopal Theological Seminary* v. *Federal Power Commission*, 269 F. 2d 228 (D.C. Cir. 1959), *cert. den., sub. nom. Pan American Petroleum Corp.* v. *Federal Power Commission*, 361 U.S. 895 (1959).

In the latter case, the Court of Appeals construed Sections 4(c) and 4(d) to control "the then applicable rate" at the time of filing, and that any other prices, even though stated in some contract already on file, can *never* become effective without prior compliance with filing requirements because ". . . forehanded contractual provisions cannot modify the regulatory provisions of the Act . . ." (269 F. 2d at 233). The court concluded that *Mobile* could not be interpreted to mean that a change from the effective rate to a price applicable under a contract would be lawful in the absence of filing of the formal change of rate under the Act (269 F. 2d at 235):

> "As we indicated above in considering the regulations we think there was a change in rate. It was an agreed-upon change if is true. And although the original schedule foretold the coming of the change, it took an amendment [to the schedule] to advise the public and the Commission that the new rate was going into operation. We see nothing in the Mobile or Memphis cases that hold otherwise."[16]

[16] The court was speaking of a twenty-year contract embodying a series of prices to be charged at specific intervals. The sellers argued that the rate initially accepted for filing and made effective (13 cents per Mcf) could be changed to the next higher price set

5. Below, Cities urged that the rate so made effective by acceptance and filing not be treated as legally binding collaterally, if such a rate has not also been "approved" as "reasonable" by the Commission. The courts adopted this novel narrowing of the bar to collateral attack, apparently because in filing a tendered rate, the Commission customarily cautions that it is not thereby "approving" the accepted rate or claimed contract provisions. The courts wholly failed to note that the *same* orders prohibit change of the *level* of the accepted rate except by exact compliance with the Act and Regulations (R. 640, 654).

The dichotomy between an "accepted" and filed effective rate and a rate "approved" as reasonable under a statutory standard is, of course, familiar in regulatory law.[17] The reservation of "approval" at the time of acceptance and filing has never meant that a rate so accepted and filed by the Commission can be overturned collaterally. That the court below erred in so concluding is shown by the holding in *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951), that a rate "accepted" and "filed" by the Commission after tender is binding as the legal, filed rate and immune to collateral revision, just as is a rate that has been "approved" as

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forth in the escalation schedule (13.5 cents per Mcf) without filing with the Commission. Regardless of what prices had thus been agreed-upon by buyer and seller, the Court of Appeals' decision was that both buyer and seller would remain legally bound by the 13 cents rate already accepted and filed by the Commission, and the next higher price stated in the contract clause could never become "effective" by "operation" of the contract, but only at such time as *that* price was made effective as the filed rate after tender and Commission action under Section 4.

[17] *Cf. Ambassador, Inc.* v. *United States*, 325 U.S. 317, 325 (1945); *Dayton Coal & Iron Co.* v. *Cincinnati, N.O. & T. P.R. Co.*, 239 U.S. 446, 450-451 (1915); *Cumberland Tel. & Tel. Co.* v. *Railroad and Public Utils. Comm. of Tennessee*, 287 Fed. 406 (M.D. Tenn. 1921); *State ex rel. Standard Oil Co.* v. *Department of Public Works*, 185 Wash. 235, 53 P. 2d 318 (1936).

"reasonable," or "fixed" by the Commission after determination of "reasonableness", under a statutory standard (341 U.S. at 251-252, 255-256.)[18] Acceptance for filing under Section 4 thus is an action conclusively establishing the rights of the parties to a specific rate, unless set aside

[18] The irony of the ruling below is shown by the obvious historical origin of the carefully worded statements of the Commission. Language reserving "approval" is *not* used to state that "acceptance" has no significance, but to prevent a company from later asserting that "acceptance" *also* constitutes a finding that a tendered rate is "reasonable," and is a bar to a subsequent adjudication of "reasonableness" of the accepted rate. In the early days of administration under the Act, contention was made that acceptance for filing of an affiliate's rates relieved a company of any burden, in a subsequent rate proceeding, to establish "reasonableness" of payments made at the filed rates of the inter-company affiliate. The legal significance of "acceptance," and "approved" as "reasonable," respectively, were then established. *Re Home Gas Company*, 2 F.P.C. 402, 409 (1941). Out of such disputes also came the holdings that the only rates a company may legally charge are rates filed with the Commission, whether "approved" as "reasonable" or not, and such accepted rates are binding upon a company and its customers until changed under the statutory procedures. See *City of Cleveland* v. *Hope Natural Gas Co.*, 3 F.P.C. 150, 187 (1942), and *Hope Natural Gas Co.* v. *Federal Power Commission*, 134 F. 2d 287, 311 (4th Cir. 1943), rev'd, other grounds, *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944). More recently, in producer regulation, a contention was made that "acceptance" for filing of a rate under temporary authorization, prevented the Commission from thereafter imposing a condition, to operate prospectively, in issuing a certificate under Section 7 of the Act. See *Re Cities Service Gas Company*, 14 F.P.C. 134 (1955). Upon review of this question, the Court of Appeals held that "acceptance" did not bar such subsequent imposition of "reasonable" conditions, to operate prospectively, but also found that under the *Montana-Dakota* rule, during the period the temporary authorization operated, the "accepted" rate, whether "reasonable" or not, was the "only legal rate" and no other "rate could have been charged. . ." *Signal Oil and Gas Co.* v. *Federal Power Commission*, 238 F. 2d 771, 773 (3rd Cir. 1956).

on direct review or until changed by further proceedings under Section 4 or 5."

Accordingly, the action of accepting tendered rates for filing is by order under Section 4 (see *Continental Oil Co. v. Federal Power Commission*, 236 F. 2d 839, fn. 3, 841, 842 (5th Cir. 1956)), which is final and reviewable *because* of this binding effect.

This is illustrated by *Cities Service Gas Co. v. Federal Power Commission*, 255 F. 2d 860 (10th Cir., 1958), *cert. den. sub. nom., Magnolia Petroleum Co. v. Cities Service Gas Co.*, 358 U.S. 837 (1958). That case reached the court under Section 19(b), *after* Cities pursued its administrative remedies and applied for rehearing under Section 19(a) upon Commission action under Section 4 accepting and filing a tendered rate of 11 cents per Mcf, accompanied by a schedule including a contract and the Kansas minimum price order (See R. 657-667, 669-678, 682-692). Dismissal of the review proceeding was urged on the ground that Cities was not "aggrieved" by Commission acceptance of the 11 cents rate for filing, and that the Commission's action, therefore, was not reviewable. The Court held that such acceptance for filing under Section 4 was final and legally binding unless set aside on review (255 F. 2d at 863):

> "The order of the agency is final for purposes of review when it imposes an obligation, denies a right, or fixes some legal relationship as a consummation of the administrative process. *Isbrandtsen Co. v. United States*, 93 U.S. App. D.C. 293, 211 F. 2d 51, certiorari denied *Japan Atlantic and Gulf Conference v. United States*, 347 U.S. 990, 74 S. Ct. 852, 98 L. Ed. 1124."
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> ". . . Petitioner has been compelled to pay eleven cents for its gas, and wrongfully so, because the Commission's acceptance of the rate schedule was pro forma the acceptance of the rate then being paid. To assert that petitioner's aggrievement lay with the invalid Kansas Corporation Commission order and not with the Power Commission's acceptance of Schedule

> 26 [Kansas minimum price order] is but to play with words. . . . petitioner's complaint lies in the action of the Power Commission in accepting a rate schedule which was not the effective rate on the critical date . . ."

Commission action in unconditionally accepting the tendered rate of 11 cents per Mcf for filing (R. 693, 697)—even though as here there was the usual reservation of "approval" as to "reasonableness" (see R. 694-695)—was correctly held to determine the only rate the seller would be authorized to charge thereafter. Unless Cities immediately obtained timely judicial review of this Commission action under Section 4, Cities would be bound thereby to pay that rate, and the controlling legal relationship between the filing company and Cities thereafter thus fixed at the filed rate of 11 cents per Mcf. Regardless of any preexistent contract or state order, Cities' "aggrievement," as Cities itself there urged (see R. 684, 691), flowed from the action of the Commission under Section 4.

6. Thus, the courts below erred in failing to recognize (1) that exercise by the Commission of its jurisdiction under Section 4 necessarily included determination of whether to accept or reject Petitioner's rate when tendered under that section; (2) that such Commission action of acceptance and filing under Section 4 is conclusive and always binding collaterally; and (3) that the definite, specific filed rate thereby made effective under the Act, is the only legal rate until changed to a different rate *level*, which can only be done through statutory procedures.

Under the Act, once the rate has been so accepted as the filed rate, that rate thus can never be modified by "private agreement" without recourse to the Commission, and then modification may be prospective only. While the parties might agree, by one means or another, that a different rate be applicable thereafter, the new rate could not become effective under the Act, and could therefore not be legally charged or collected, until that specific

rate had become the filed rate by being tendered for the required period; by being accepted for filing and filed; and by the failure of the Commission to suspend it or, after suspension, by being placed in effect subject to refund. As a result of Commission actions under Section 4, it is not only possible but increasingly frequent for a contract, either in original form or as amended, to state some price which is different from the actually effective filed rate. Under such circumstances, the statute does not permit buyer and seller to do business on the basis of a contract price. The filed rate still governs.[19] Otherwise, all of the Commission's duties and powers under Section 4 would gravitate directly into the hands of private persons and into courts of general jurisdiction, including state courts, and certainty heretofore drawn from the specific rate effective by Commission acceptance and filing would be destroyed.

The Commission's formal determinations in 1955 and 1957 to accept Petitioner's tendered rates of 11 cents and 11.0715 cents for filing, and to permit those rates to become effective under Section 4, are not now open to any collateral modification. In Cities' own private view, the Commission's public acts may be considered erroneous, but the Commission's public records for the past five years cannot simply be destroyed and the actions under Section 4 so erased. The statute precludes this, and Petitioner's filed rates under Section 4 are binding upon both buyer and seller for the periods in dispute, and must remain so until changed as the statute permits.

[19] See Cities' own recognition in May, 1955, that the filed rate effective by Commission action is the only rate a seller legally may charge, and the only rate Cities is legally obligated to pay (R. 760-761).

C. Commission acceptance and filing of a tendered rate may be set aside only under Section 19(b) of the Act

Section 19(b) vests in the United States Courts of Appeals exclusive jurisdiction to set aside or modify any Commission action of acceptance and filing of a tendered rate. When the courts below presume to declare Commission action "null," they usurp that jurisdiction and strip Commission action of administrative and statutory finality. This is directly contrary to the reasoning of the federal Courts of Appeals in considering relation of the *Mobile* case to statutory provisions for agency and judicial jurisdiction.

1. The exclusive provisions for review under Section 19(b), and the binding effect of Commission actions collaterally, do not ebb and flow with views of private persons as to whether the Commission may have erred. "Whether correct or incorrect its determination [can] not be attacked collaterally." *Northwestern Public Service Co.* v. *Montana-Dakota Utilities Co.*, 181 F. 2d 19 (8th Cir. 1950), aff'd *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951).[20] Thus, in timely review under Section 19(b), the Commission ultimately was held incorrect in *Mobile* and correct in *Memphis*, but in neither case was it even intimated that protestants could have ignored the Commission's actions accepting tendered rates or overturned those actions by attack, years later, in state courts. Similarly, in the matter reviewed in *Sun Oil Co.* v. *Federal Power Commission*, 364 U.S. 170 (1960), the protesting seller could not have ignored Commission action by charging a rate the Commission had rejected, even though buyer and seller had agreed upon the rejected price in a contract; and the buyer and seller in dispute

[20] See also *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U.S. 767 (1947); *Butte A. & P. Ry. Co.* v. *United States*, 290 U.S. 127 (1933); *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U.S. 381 (1940).

over the rate reviewed in *Texas Gas Transmission Corp. v. Shell Oil Co.*, 363 U.S. 263 (1960), could not have overturned the Commission's conclusions upon the rate to be accepted for filing, by means of collateral suit upon their respective theories.

All protestants were required to proceed in timely manner to the Courts of Appeals and this Court under Section 19(b), or Commission action otherwise would have become final and unassailable collaterally.

2. The federal courts correctly have not endorsed collateral attacks, such as Cities has mounted upon the premise that they were authorized by the *Mobile* holding. The reasoning in two cases is illustrative.

Pertinent background of the *Mobile* case was considered in *Tyler Gas Service Co. v. Federal Power Commission*, 247 F. 2d 590 (D.C. Cir. 1957). The Commission there sought to distinguish *Mobile* on the ground that the buyer in the *Tyler* case had acquiesced in the *first* "unilateral" change of a rate accomplished by the seller's filing of the conversion tariff, and therefore could not object to a *subsequent* "unilateral" increase in the effective rate. In the ruling on this contention, reference was made to the history of the *Mobile* case. As disclosed by the opinion of the Third Circuit (215 F. 2d 883) when *Mobile* was before it, the contract between United and Mobile originally provided for a percentage rate equal to 80% of Mobile's gross resale revenues up to 41,667 Mcf per billing month, and 90% in excess thereof. There was no provision in this contract for changing the price, and the contract was filed as a rate schedule under the Act. In July, 1952, without protest by Mobile, United tendered and the Commission accepted and filed as a supplement to United's rate schedule, a unilateral change of United's rate to Mobile substituting 10.7 cents per Mcf in place of the percentage rate. This rate of 10.7 cents was not the same in amount as the percentage rate. Thereafter, on June 24, 1953, United

tendered, and the Commission accepted, another unilateral change in the rate for Mobile, which purported to change the 10.7 cent rate to 14.5 cents per Mcf. Mobile protested against the acceptance of the 14.5 cents filing and ultimately perfected a timely appeal therefrom. The Third Circuit then held that while Commission acceptance, without protest by Mobile, of the unilateral change in rate to 10.7 cents *had* made that rate the filed rate, Mobile was not thereby deprived of its right to protest *subsequent* unilateral changes. Respecting this situation, the Court of Appeals for the District of Columbia in the *Tyler* case noted, "Mobile acquiesced in the conversion tariff and was thereafter billed at and paid the conversion rate until United applied for an increase in its industrial rate and the Commission ordered the increased rate paid. It was this increased rate, absent a finding that the contract rate was in conflict with the public interest, which the Supreme Court ruled a nullity." (247 F. 2d at 593).

Thus, the first supplement to its rate schedule which United tendered and the Commission filed, changing the filed rate for the sale to Mobile from the percentage rate *to* 10.7 cents per Mcf, obviously had no force and effect under common law as a contract or otherwise. That document which by acceptance and failure to protest, became a part of a rate schedule under the Act, was as "unilateral" as United's subsequent supplement to change the rate *from* 10.7 cents *to* 14.5 cents. Nevertheless, this Court in *Mobile* recognized that this first tender by United, "unilateral" though it had been, by becoming without protest a part of United's rate schedule under the Act, had become the filed rate, and, as such, had to be observed by the parties. That supplement derived its force and effect from the statute; there was no other source from which it could have derived effectiveness. In *Tyler*, the court's analysis of both *Mobile* and the case before it thus was clear: the *first* "unilateral" rate, after the failure of the buyer to protest, became final as the filed

rate, superseding an original "contract" price, and was binding and effective while in force, even though a *subsequent* "unilateral" increase in rate level, protested at the Commission and reviewed in timely manner under Section 19(b), could be set aside.

The *Mobile* decision was similarly reviewed in *Portsmouth Gas Co.* v. *Federal Power Commission*, 247 F. 2d 90 (D. C. Cir. 1957). A purchaser there took the position that despite intervening Commission actions, the *Mobile* opinion meant that the only proper rate was one set forth in a contract signed in 1931, some twenty-six years earlier. In defense of Commission actions, the seller asserted that between 1931 and the date of the *Mobile* holding, various superseding rates had become effective as a result of Commission actions in 1946, 1952, 1953, and 1954, and that the purchaser had not then opposed these filed rates, and had made payment thereon. The Court of Appeals, after reference to *Mobile*, concluded that even though some of the tendered rates after 1931 had been "unilateral," the purchaser "may nevertheless be bound by the change if it offered no opposition and has since acquiesced." (247 F. 2d at 94). Finding the record insufficient as to specific actions of the Commission and of the belated protestant between 1931 and 1957, the court remanded the case for findings *inter alia*, as to whether the purchaser had become "estopped by acquiescence, or otherwise to question the substitution." (247 F. 2d at 94).

The court did not undertake, as apparently the Delaware courts would, simply to compare a 1931 contract and the *Mobile* holding, and then say that all Commission actions, even though *not* protested at the time entered and *not* reviewed in timely manner under Section 19(b), were simply "nullities." To the contrary, the court made very clear its conclusion that under the Act, acquiescence and failure of the buyer to protest a filing in timely manner, would preclude collateral attack, years later, upon Commission action.

3. Similar construction appears in two cases considered below only with respect to state pricing orders, and not to more relevant conclusions as to timely review under Section 19(b).

In the first, *Natural Gas Pipe Line Company of America v. Federal Power Commission*, 253 F. 2d 3 (3rd Cir. 1958), *cert. den.* 357 U.S. 927 (1958), the court had before it under Section 19(b) a complex dispute arising out of a tender of a rate. In October, 1954, a seller tendered a copy of a contract and, as a supplement, a copy of an Oklahoma 9.8262 cents minimum price order. The buyer *immediately* protested, and the Commission accepted the filing upon the "condition" that the state order be upheld in then pending litigation. In the next month, the seller tendered an increase in rate to 10 cents per Mcf, but the Commission suspended the change and ordered a hearing under Section 4(d). Thereafter, upon motion of the seller, the Commission permitted the increased rate of 10 cents to become effective subject to a bond covering refund of any portion of the increase subsequently found unreasonable. Because this bond covered only the difference between the rate of 9.8262 cents and the 10 cents rate, the buyer *immediately* sought an increase in the bond. At about this time, the Oklahoma order was held invalid, but after hearing upon the amount of the bond, the Commission held the bond sufficient. Meanwhile, in December, 1955, the seller had tendered a new rate equal to the rate under protest (9.8262 cents) and by letter order the Commission unconditionally accepted this rate to be effective on January 27, 1956. The buyer *immediately* also filed objection to filing of this rate. Rehearing was denied, and upon review under Section 19(b) of all of the orders involved, the Court of Appeals held that under the condition imposed by the Commission, the original tendered rate of 9.8262 cents must be lowered to a precedent contract price. More pertinent, however, to the question of jurisdiction to set aside Commission action, was the court's consideration of the neces-

sary and timely attack by the buyer upon the Commission's action in accepting the last rate of 9.8262 cents tendered by the seller in December, 1955. Before the court, it was contended that the buyer could not be "aggrieved" by acceptance of this rate. The court, however, found that even if all of the previous orders were reversed by it, and this later action by the Commission was left outstanding, "it could and probably would be claimed that the February approval established a sound nine cent rate from January 27, 1956, when the 30-day notice time elapsed." (253 F. 2d at 9). The court thus concluded that the buyer correctly and immediately protested this last letter order of acceptance, and was correct in immediately petitioning for review under Section 19(b). Otherwise, in the absence of the timely judicial reversal of this last Commission action, buyer and seller would be bound by the rate accepted and made effective by that action.

The second case involving both filed rates and a state order is *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F. 2d 860 (10th Cir. 1958), *cert. den sub. nom. Magnolia Petroleum Co.* v. *Cities Service Gas Co.*, 358 U.S. 837 (1958); which, because of emphasis below, also requires reference to chronology. That case, a review under Section 19(b), dealt with acceptance and filing of a rate of 11 cents per Mcf. The seller, in tendering the rate of 11 cents per Mcf to the Commission for acceptance and filing, had submitted with its tender a contract with Cities and the Kansas minimum price order (R. 658, 662-663). Cities immediately filed a protest of the 11 cents rate, urging rejection (R. 659-667, 669-678). In the light of Cities' protest, the Commission, on March 21, 1957, accepted the tendered rate subject to the clearly expressed condition that acceptance was without prejudice to claims of either seller or buyer in litigation over the rate (R. 680). Both seller and Cities immediately applied for rehearing under Section 19(a) (R. 683-692, 697), and on May 17, 1957, the Commission modified its original action, removed

the condition, and accepted for filing without qualification (except for the customary reservation of "approval," R. 694), the contract and minimum price order as the seller's rate schedule and 11 cents as the seller's rate (R. 697-698).

Under Section 19(b), Cities filed its petition for review of the Commission's action. In that review proceeding, Cities itself urged that acceptance for filing of a rate schedule consisting of the contract and minimum price order constituted acceptance of a rate schedule providing for an 11 cents filed rate; that acceptance of such rate schedule constituted a construction thereof by the Commission that the rate schedule provided for an 11 cents filed rate; and that such acceptance also constituted a *final* determination by the Commission that the seller's June 7, 1954 filed rate was 11 cents per Mcf. (See 255 F. 2d at 862).

The court fully agreed with Cities, concluding that as a result of the Commission's acceptance, and as long as that action was outstanding, Cities was compelled under the Act to pay the 11 cents per Mcf as the filed rate. The court rejected the view that Cities' "aggrievement" could be said to derive from contract or a state order, its "complaint" lying in the action of the Commission in accepting the seller's 11 cents rate for filing and the state order as a part of the rate schedule to be effective under the Act. (255 F. 2d at 863). Regardless of remedies available in other litigation, Cities' ". . . rights to redeem excess payments made subsequent to the Commission action" would be "imperiled" by "the existence of the outstanding Commission order." Therefore, the court reviewed the merits of Cities' protest and set aside Commission action, but, in so doing, made clear that the remedy for the protestant of a tendered and accepted rate lies exclusively under Section 19(b), and not in some later, collateral action.

Cities thus, had pursued the *only* permissible administrative and judicial avenues to contest and to set aside such Commission action accepting and filing a tendered rate.

Sections 19(a) and 19(b) consistently have been construed to mean that *all* objections to validity of Commission action must be made in the manner prescribed by those sections. If objections are *not* raised under these procedures, they may not be asserted, and Commission action becomes final and unreviewable. See *Federal Power Commission* v. *Colorado Interstate Gas Co.*, 348 U.S. 492 (1955); *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 324 U.S. 635 (1945); *Cf. Service Storage & Transfer Co.* v. *Commonwealth of Virginia*, 359 U.S. 171 (1959).

4. The state courts, however, apparently read *Mobile* as authorizing a different, ex-statutory procedure for modification of Commission acts.

This reading seemingly derives from reference in *Mobile* to *Baltimore & O. R. Co., et al.* v. *United States, et al.*, 279 U.S. 781 (1929), but the latter case could *not* have been cited as supporting a theory that an action for "restitution" may be maintained independently of review under statutory procedures. In the first "phase" of the *Baltimore* case, suit before a three-judge court to set aside an order of the Interstate Commerce Commission had been dismissed "for want of equity," but this Court reversed, directing further proceedings. Thereafter, appellants applied in the District Court for a decree in conformity with this Court's mandate, and also prayed restoration of charges paid to comply with the Commission's order up to the time of this Court's reversal. The three-judge court then set aside the Commission's order and made findings as to appellants' compliance therewith while it was in effect, but denied restitution. This Court then reversed that denial on the ground that the three-judge court, having juris-

diction to set aside the Commisison order, had jurisdiction which "necessarily includes power to make all orders required to carry on such suits and to *enforce the rights and liabilities of the parties that arise in the litigation.*" (279 U.S. at 785, emphasis supplied). While the "subject of the controversy and parties are before the court, it has jurisdiction to enforce restitution and so far as possible to correct what has been wrongfully done," but this is not authority for the proposition that *without* recourse to the three-judge court, as required to have the commission order set aside, the commission's order could have been attacked collaterally in a state court in an independent action for "restitution." Rrerequisite was reversal of commission action, and jurisdiction to order "restitution" then was wholly ancillary to jurisdiction to review and set aside that order. See also *Atlantic Coast Line R. Co.* v. *State of Florida*, 295 U.S. 301 (1935).

Here, timely reversal under Section 19(b) would be such a condition precedent to any claim for "restitution." The Commission, like any other body, could act in a manner that one person or another later deems erroneous, but such "error" could not "transcend" jurisdiction. See *Butte, A. & P. Ry Co.* v. *United States*, 290 U.S. 127 (1933); *NLRB* v. *Pappas & Co.*, 203 F. 2d 569 (9th Cir. 1953). Having primary jurisdiction over the subject matter—the rate for a regulated sale—the Commission necessarily exercises that jurisdiction to apply the specifics of its regulatory power to any given set of facts. When it does so, any of its actions are subject to timely review, but obedience of all Commission actions is required by statute as long as its orders are in effect. Its actions cannot be treated as "void" collaterally, even if one person or another claims agency action may have been at one time "voidable" in a proper review proceeding. *Atlantic Coast Line R. Co.* v. *State of Florida*, 295 U.S. 301 (1935); *United States* v. *Morgan*, 307 U.S. 183, 195-198 (1939).

A state court cannot now so exercise the jurisdiction Section 19(b) vests exclusively in United States Courts of Appeals. As this Court has stated with reference to comparable procedures under the Federal Power Act, where Congress prescribes an exclusive procedure for questioning acts of the agency, such questioning must be done as prescribed by statute, or *not* at all. See *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320 (1958). "Such statutory finality need not be labeled *res judicata*, estoppel, collateral estoppel, waiver or the like either by Congress or the courts." (357 U.S. at 336-337).

II. THE STATE COURT HAS ERRED BY ASSUMING JURISDICTION TO SET ASIDE A FILED RATE COLLATERALLY, AND TO ENFORCE A DIFFERENT PRICE AS THE RATE FOR A REGULATED SALE.

In the face of this exclusive primary jurisdiction of the Commission under Section 4 (pp. 25 through 37, *supra*), and of the Courts of Appeals under Section 19(b) (pp. 38 through 47, *supra*), the state courts nevertheless have proceeded with a process of synthesis under which filed rates of 11 cents and 11.0715 cents would be changed by a state court to a "rate" of 8.4 cents enforceable in a state court. Section 22 of the Act further precludes such jurisdiction in a state court.

A. Jurisdiction to enforce claimed rights and liabilities in a sale covered by a filed rate is vested exclusively in the United States District Courts

Section 22 provides in pertinent part,

> "The District Court of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have *exclusive* jurisdiction . . . of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder." (Emphasis supplied).

The state court recognized that the filed rate is the *only* binding legal rate, and that that rate may not be changed by a court collaterally (R. 8, 18). This alone should have compelled the conclusion that a state court, because of Section 22, could have no jurisdiction to do what Cities sought to have done.

I. At the outset, the state court was on notice as to challenge of its jurisdiction, and the question of federal jurisdiction over Cities' original actions immediately was tested in a companion case. The federal court, looking only at the face of the initial complaint under the federal removal rule, remanded to the state court, but concluded that the question of whether the state court itself lacked jurisdiction of the subject matter, in the light of the Natural Gas Act, was to be decided by the latter court in the first instance after remand. (See *Cities Service Gas Co.* v. *Skelly Oil Co.*, 165 F. Supp. 31 (D.C. Del. 1958)).

Having thus successfully withstood removal, Cities then pressed for judgment, but in the process discarded, one by one, the "common law" veils which shrouded the subject matter initially. By amendment of its complaint, it submitted facts showing that under *Phillips Petroleum Co.* v. *State of Wisconsin*, 347 U.S. 672 (1954), Petitioner's sale and rates must be subject to the Natural Gas Act (See R. 619-620). In moving for summary judgment, it relied upon the filed rate schedule, and, although discussing its original theories, laid bare what it sought in a state court (R. 764, 766):

> "Plaintiff seeks merely to enforce its right to a refund of payments made in excess of the contract rate which is necessarily the same rate as is fixed in its rate schedule. *There can be no question but that a court of general jurisdiction has the duty to* construe, apply and *enforce defendant's rate schedule.*" (Emphasis supplied)

Under the heading "[t]he law permits no deviation from defendant's filed rate of 8.4 cents per Mcf," Cities then set forth its claim that 8.4 cents per Mcf (at 16.4 p.s.i.a.) is the "filed rate," and that this rate "fixed by defendant's rate schedule is binding upon plaintiff and defendant and upon this court with the force and effect of federal statute." (R. 767). Cities further alleged that after the court had "determined what rate is fixed by defendant's rate schedule, the Court is bound, as a matter of law, to enforce this rate." (R. 770). Similarly, in contesting Petitioner's motion challenging jurisdiction of the court, Cities made very plain that the filed rate was the subject matter of the controversy and what it sought in the state court (R. 771, 775), and ultimately took the position that "even assuming *arguendo*, only that defects exist in plaintiff's complaint, such defects have been cured and supplied by defendant's own allegations." (R. 777-778).

The trial court thereupon correctly concluded that all parties were in agreement that the only legal rate is the filed rate; and recognized this to be the law (R. 18), but failed to make the conclusion Section 22 then required. The subject matter was not sheltered by technics employed in drafting of an original complaint, as on removal.[21] Recognizing that a state court, considering *both* complaint *and* answer, may have difficulty in determining whether "the subject matter" is "withdrawn from the state," this Court has long cautioned state courts that where the facts show that the controversy falls within the scope of a federal statute, "the state court must decline jurisdiction in deference

[21] "Jurisdiction cannot be effectively acquired by concealing for a time the facts which conclusively establish that it does not exist." *Lambert Run Coal Co.* v. *Baltimore & Ohio Railroad Co.*, 258 U.S. 377, 382 (1922); *Cf. Smith* v. *McCullough*, 270 U.S. 456 (1926); *Peyton* v. *Railway Express Agency*, 316 U.S. 350 (1942); *Norton* v. *Larney*, 266 U.S. 511 (1925); *Molnar* v. *National Broadcasting Co.*, 231 F. 2d 684 (9th Cir. 1956); *Realty Holding Co.* v. *Donaldson*, 268 U.S. 398 (1925).

to the tribunal which Congress has selected for determining such issues in the first instance.". *Weber* v. *Anheuser-Busch, Inc.*, 348 U.S. 468, 481 (1955). Here, under Section 22, the federal courts are such a tribunal.

2. To accord Cities relief under any theory, the state courts found that they first were required to declare outstanding Commission actions upon the very rates in question to be "nullities." (R. 19, 45). *Cf. Lambert Run Coal Co.* v. *Baltimore & Ohio Railroad Co.*, 258 U.S. 377 (1922); *Simpson* v. *Southwestern Railroad Co.*, 231 F. 2d 59 (5th Cir. 1956), *cert. den.* 352 U.S. 828 (1956). In the face of such revelations that is, that the subject matter of dispute and of plaintiff's claim is a rate subject to Commission jurisdiction and the provisions of the Act the state courts seem to seek to avoid the ban of Section 22 by claiming a residual "jurisdiction" deriving from a precedent contract or an ancillary, alleged, unfiled agreement. At best, such jurisdiction, in theory, could only be "concurrent" with plenary federal jurisdiction over the rates thereinf; and at worst, a state court could not in practice avoid intruding upon federal jurisdiction, as is the case here. The conclusions of the Delaware courts are thus in marked contrast to those of the Supreme Court of the State of Mississippi in holding that the Act leaves no room for such "residual" jurisdiction in a state court. *United Gas Pipe Line Co.* v. *Willmut Gas & Oil Co.*, 231 Miss. 790, 97 So. 2d 530, 535-536 (1957), *cert. den.* 357 U.S. 937 (1958).

Obviously, under the Act, contracts may be negotiated, but the Commission's exclusive jurisdiction attaches when a rate is on file with the Commission under Section 4, and Sections 19 and 22 of the Act then also are paramount. Whether the rate *level* thereafter, is, or should be, one figure or another is not for a state court to say. Sections 4 and 19 establish other fora, and in Section 22, Congress has defined the exclusive forum for enforcement of rights or liabilities of buyer or seller, as defined by the filed rate.

Cf. Wicks v. Swan, 346 U.S. 427 (1953).[22] Even if a court may examine, at the threshold, the question of power to hear and determine a controversy as presented, when it is shown that power to do so is not conferred upon that court, or is excluded by statute, then that court "lacks jurisdiction of the subject matter and must refrain from any adjudication of rights in connection therewith." *In Re National Labor Relations Board*, 304 U.S. 486, 494 (1938).

The subject matter being committed to the exclusive jurisdiction of a federal agency and the federal courts under Section 22, the state court cannot proceed. Questions of what may now be the power of the Commission and the federal courts, respectively, over claims as to past rates, or rights or liabilities for "restitution" or "overpayments," cannot be decided by the state court.

B. Exercise of jurisdiction by the state court destroys the comprehensive scheme of federal regulation

This Court held that producers' rates are subject to exclusive, primary jurisdiction of the Commission, and that commissions of states of production may not exercise jurisdiction over rates for the same sales because of such federal pre-emption. *Cities Service Gas Co. v. State Corporation Commission of Kansas*, 355 U.S. 391 (1958); *Natural Gas*

[22] Thus even if it were assumed that the *level* of a filed rate is exactly the same level as a price set forth in a contract or stated in a collateral unfiled agreement (which is not the case here), a state court still would not be empowered to enforce rights under that rate. "Coincidence" of such facts would not mean that the state court had jurisdiction; enforcement of rights under the rate still could only be in a federal court under Section 22. *Cf. Commonwealth of Pennsylvania v. Nelson*, 350 U.S. 497 (1956). In *Charleston and Western Carolina Railway Co. v. Varnville Furniture Co.*, 237 U.S. 597 (1915), it was said that when Congress "has taken the particular subject-matter in hand, coincidence is as ineffective as opposition and a state law is not to be declared a help because it goes farther than Congress has seen fit to go."

Pipe Line Co. v. *Panoma Corp., et al.*, 355 U.S. 391 (1958). A state court is likewise excluded.

1. Sections 4, 19, and 22 thus prescribe a single federal rate regulatory scheme, comprehensive in scope, detailed in application, and operative under procedures and timing required by the Act and Commission regulations. Collateral actions such as those entertained below can only intrude upon and nullify the statutory and administrative procedures, *regardless* of what theory the state court claims to apply. Consequences of "concurrent" jurisdiction by the state courts over rates regulated by the Commission can only be those well foretold in a similar context:[23]

> "A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law. The same reasoning which prohibits federal courts from intervening in such cases, except by way of review or on application of the federal board, precludes state courts from doing so. *Cf. Muers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 58 S. Ct. 359, 82 L. Ed. 638; *Amalgamated Utility Workers* v. *Consolidated Edison Co. of N. Y.*, 309 U.S. 261, 60 S. Ct. 561, 84 L. Ed. 738. And the reasons for excluding state administrative bodies from assuming control of matters expressly placed within the competence of the federal board also exclude state courts from like action. *Cf. Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U.S. 767, 67 S. Ct. 1026, 91 L. Ed. 1234."[24]

[23] *Garner* v. *Teamsters, Chauffeurs and Helpers*, 346 U.S. 485, 490-491 (1953).

[24] See also *Garner* v. *Teamsters, Chauffeurs and Helpers, supra*; *Local Union Number 25* v. *New York, New Haven & Hartford Railroad Co.*, 350 U.S. 155 (1956); *Local 24 of International Brotherhood of Teamsters, etc.* v. *Oliver*, 358 U.S. 283 (1959); *Pennsylvania Railroad Co.* v. *Day*, 360 U.S. 548 (1959); *Union Pacific Railroad Co.* v. *Price*, 360 U.S. 601 (1959); *Slocum* v. *Delaware L. & W. R. Co.*, 339 U.S. 239 (1950); *Williams* v. *Lee*, 358 U.S. 217 (1959); *Farmer's Educational & Cooperative Unions* v. *WDAY, Inc.*, 360 U.S. 525 (1959). As stated in *Bethlehem Steel*

In this case, enforcement of *any* claim with respect to the rates by the state court would superimpose coercive authority of the State and its law upon subject matter which the Act has placed within the exclusive jurisdiction of the Commission and federal courts. In *San Diego Building Trades Council etc. v. Garmon*, 359 U.S. 236 (1959), specific attention was given to what inevitably follows in such an area of exclusive federal jurisdiction when state courts thus entertain and enforce claims, even if considered to be grounded upon state law at the outset (359 U.S. at 247):

> "Such regulation can be as effectively exerted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy. Even the States' salutary effort to redress private wrongs or grant compensation for past harm cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme."

2. Cities' actions apparently rest upon a proposition that because it once obtained reversal of one Commission action accepting and filing an 11 cents rate, upon timely review under Section 19(b), the substance of that one decision is authority for later state court declarations that other Commission actions, in other matters involving different facts, are now "null." This obviously does violence to all of the statutory proscriptions of jurisdiction. *Cf. Watab Paper Co. v. Northern Pac. Ry. Co.*, 154 F. 2d 436 (8th Cir. 1946). The state courts cannot be a proper forum for such attack upon federal agency action, whether assertion of invalidity

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Co. v. New York State Labor Relations Board, 330 U.S. 767 (1947), exclusion of state action may be implied from the nature of federal regulation and the subject matter involved, even though an express declaration is wanting, because permission of even concurrent jurisdiction must be withheld where the necessity of federal action is paramount.

of federal action rests upon a claim of substantive or of procedural error; and such an attack clearly is not only collateral, but also premature, where administrative and statutory remedies have not been exhausted. See *Allen* v. *Grand Central Aircraft Co.*, 347 U.S. 535 (1954); *Callanan Road Improvement Co.* v. *United States*, 345 U.S. 507 (1953); *Service Storage & Transfer Co.* v. *Commonwealth of Virginia*, 359 U.S. 171 (1959). *Yakus* v. *United States*, 321 U.S. 414 (1944).[25]

The plaintiff below has long known that its remedies lay before the Commission initially, and then through the review procedures of Section 19. See *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F. 2d 860 (10th Cir. 1958). Nevertheless, despite the additional restriction of Section 22, it has mounted collateral attacks in state courts of "general" jurisdiction with complaints initially alleging that an unfiled "contract" has been formed by what, in fact and law, at best could be but a unilateral announcement by Cities that it claimed that the payments which it had decided to make of a state minimum price were involuntary, and an offer on Petitioner's part to agree to refund *without* interest any such overpayments, which offer was *not* subsequently accepted by Cities. Then, these initial allegations fade as plaintiff seeks an adjudication that the filed rate is different from that which the Commission accepted and filed years earlier, and asks a state court to enforce that "filed" rate, even though the Act forbids such

[25] See also *United States* v. *Balogh*, 329 U.S. 692 (1947); *Evans* v. *United States*, 252 F. 2d 509 (9th Cir. 1958); *Miller* v. *United States*, 242 F. 2d 392 (6th Cir. 1957); *Smith* v. *Sherrard*, 208 F. 2d 180 (Emergency Court of Appeals 1953). In the proceeding below, Cities set forth various facts as to actions of the Commission upon its own rates. Such rate matters, obviously, are for the Commission and federal courts to decide. Cities also recited equitable considerations said to be in its favor, and Petitioner submitted the equities in its favor (R. 620, 629, 633-634), but these, too, are not for the Delaware court to weigh.

acts, and such "judgment" would compel a regulated company to violate the Act by departing from the filed rate.

3. The obvious, practical impact may be briefly noted. Under the Act, hundreds of rates are tendered to the Commission by regulated companies, and are now effective after acceptance and filing under Section 4, to which both buyers and sellers must look for any certainty as to the legal rate. Recourse is had only to the Commission to make a change in the effective rate. At least until the Delaware courts assumed jurisdiction, it was not thought that any jurisdiction remained in a state court to override Commission actions or to serve as a forum in which private parties, by alleged unfiled agreements, could accomplish a rate change, depending solely upon how much validity a state court chose, in later years, to accord to Commission action.

Many regulated companies, Petitioner among them, from time to time have questioned the correctness of Commission decisions upon tendered rates and construction of a rate schedule. In some instances, such actions have been contested by timely review under Section 19(b), and the Commission's substantive decisions then have been affirmed or reversed,[28] but "concurrent" exercise of jurisdiction by state courts nullifies these review procedures of the Act, as well as the proscription of Section 22. The Act requires that filed rates be embodied in schedules open to public inspection, so that any affected person, by examination of the Commission's files, can ascertain exactly what rate is effective at any time for any given sale or service. It is upon this basis that rates are paid, that complaints as to reasonableness may be drawn, and that discrimination,

[28] *Cf. Phillips Petroleum Co.* v. *Federal Power Commission*, 258 F. 2d 906 (10th Cir. 1958); *Kerr-McGee Oil Industries Inc.* v. *Federal Power Commission*, 260 F. 2d 602 (10th Cir. 1958); *Cities Service Gas Producing Co.* v. *Federal Power Commission*, 233 F. 2d 726 (10th Cir. 1956); *Phillips Petroleum Co.* v. *Federal Power Commission*, 227 F. 2d 470 (10th Cir. 1955).

preferences, or other prohibited practices may be determined. On this level of practicality, the Delaware courts' activity has an immediate impact. What those courts, in effect, do is assume jurisdiction to cancel and rescind the Commission's public minutes of 1955 and 1957, to strike out parts of a schedule filed in 1954 and 1957 and still in the public files by Commission action, and then enforce an alleged unfiled "contract" so as to change the effective rate level. Under the holding below, even this need not be the end. It could well be that some months or years hence Cities, or someone else, could bring forth from private files other papers alleged to be a different "contract" again changing the "filed" rate level, and a state court again might be prevailed upon to make still another rate effective for the sale. Under such a holding, rates filed by the Commission obviously would remain subject to any change through litigation in the trial and appellate courts of the states, and exercise of Commission jurisdiction over the rate is stripped of finality.[27]

One illustration should demonstrate better than words why the Delaware courts cannot exercise such jurisdiction. In the Magnolia Petroleum Company case (255 F. 2d 860), discussed on pages 43 through 45 of this brief, the United States Court of Appeals for the Tenth Circuit, acting in a timely statutory review proceeding under Section 19(b), did the precise thing the Delaware courts have attempted. The Tenth Circuit Court in that statutory review proceeding set aside an order of the Commission accepting an 11 cent rate for filing, and in so doing reinstated another price—exactly the jurisdiction the Delaware courts seek to

[27] Thus far, the Delaware state courts apparently are alone in claiming such jurisdiction, as the Mississippi Supreme Court has prevented collateral attacks upon filed rates. Final decisions on the question of jurisdiction have not yet been reached in litigation pending in the state courts of Iowa, Kansas, Nebraska, Oklahoma and Colorado. Pending cases were listed in Appendix J to Petitioner's "Petition for Writ of Certiorari," pp. 83a-85a.

exercise. In the Magnolia Petroleum Company proceeding, Cities exhausted the administrative remedies as required by Commission rules and regulations and Section 19(a) in timely fashion. Cities then contested the action of the Commission in accepting the 11 cent rate for filing by proceeding with timely statutory review under Section 19(b). It cannot now succeed in an effort to accomplish a similar objective in a collateral action, years later, in any state court of general jurisdiction where a defendant could be served.

CONCLUSION

The Commission has exercised its jurisdiction and accepted and filed the tendered rates; the Delaware courts are without jurisdiction either to collaterally review and set aside Commission actions, to enforce these rates, or to enforce some rates other than these rates, and thus are without jurisdiction under any possible theory of the case.

For the foregoing reasons, it is respectfully submitted that the judgment of the Supreme Court of the State of Delaware should be reversed and vacated, and that thereupon the Writ of Prohibition prayed for in that court by Petitioner should issue.

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APPENDIX

A. The Natural Gas Act, 52 Stat. 821, as amended, 15 U.S.C. 717, *et seq.*, provides in pertinent part:

Rates and Charges; Schedules; Suspension of New Rates

Sec. 4 (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from June 21, 1938) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such

rate, charge, classification, or service, or in any rule, regulations, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension

period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible. [52 Stat. 822 (1938); 15 U.S.C. §717e].

Fixing Rate and Charges; Determination of Cost of Production or Transportation

Sec. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order:

Provided however, That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas. [52 Stat. 823 (1938); 15 U.S.C. § 717d].

Administration Powers of Commission; Rules, Regulations, and Orders

Sec. 16. The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things such rules and regulations may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the

Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours. [52 Stat. 830 (1938); 15 U.S.C., § 717o].

Rehearing; Court Review of Orders

Sec. 19 (a) Any person, State, municipality, or state commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located

or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commisison upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part.

No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the

Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in Section 1254 of Title 28.

(c) The filing of an application for rehearing under subsection (a) of this section shall not unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order. [52 Stat. 831 (1938); 15 U.S.C. § 717r].

Jurisdiction of Offenses; Enforcement of Liabilities and Duties

Sec. 22. The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation or order thereunder. Any criminal proceeding shall be brought in the district wherein any chapter or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder may be brought in any such district or in the district wherein the defendant is an inhabitant, and process in such cases may be served wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254 and 1291-1294 of Title 28. No costs shall be assessed against the Commission in any judicial proceeding by or against the Commission under this chapter. [52 Stat. 833 (1938); 15 U.S.C. § 717u]

B. The Federal Power Commission Regulations under the Natural Gas Act, 18 C.F.R., provide in pertinent part:

154.92 Filing of Rate Schedules by Independent Producer

(a) Every independent producer who, on or since June 7, 1954, has engaged in the interstate transportation or sale of natural gas subject to the jurisdiction of the Commission shall on or before December 1, 1954, file with the Commission rate schedules, as defined in Section 154.93 hereof, setting forth the terms and conditions of service and all rates and charges for such transportation or sale effective on June 7, 1954. To each such rate schedule there shall be attached a statement showing actual billing for a recent month in sufficient detail to show how the billing amount is determined.

(b) Every independent producer who, subsequent to the effective date of these rules, proposes to initiate an interstate transportation or sale of natural gas subject to the jurisdiction of the Commission to an existing or new customer shall file with the Commission not less than 30 days nor more than 90 days prior to the date such transportation or sale is proposed to be initiated a rate schedule, as defined in Section 154.93 hereof, setting forth the terms and conditions of service and all rates and charges for such transportation or sale. To each such rate schedule there shall be attached a statement showing estimated sales and billing for the first month of service, in sufficient detail to show method of billing and prices used. The statement shall also give the proposed date of commencement of service. A complete copy of all material shall be furnished to each purchaser under the rate schedule. With each such filing there shall be submitted a list of parties to whom such material has been mailed.

(c) Every independent producer who transports or sells less than 100,000 Mcf annually of natural gas subject to the jurisdiction of the Commission may, in lieu of the re-

quirements of paragraphs (a) and (b) of this Section file a statement showing (1) the approximate annual volume involved, (2) the rate charged therefor, (3) the name of the purchaser, and (4) the geographical location (field, county, and State) at which delivery is made.

154.93 Rate Schedule Defined

For the purpose of Sections 154.92 through 154.101 hereof "Rate Schedule" shall mean the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954, showing the service to be provided and the rates and charges, terms, conditions, classifications, practices, rules and regulations affecting or relating to such rates or charges, applicable to the transportation of natural gas in interstate commerce or the sale of natural gas in interstate commerce for resale subject to the jurisdiction of the Commission.

154.94 Changes in Rate Schedules

(a) No change shall be made in any rate, charge, or service in effect on and after June 7, 1954, for the interstate transportation or sale of natural gas in interstate commerce subject to the jurisdiction of the Commission by any independent producer required to file rate schedules pursuant to Section 154.92 hereof, without first filing a change in rates pursuant to Section 4(d) of the Natural Gas Act and in accordance with this section.

(b) Every change in any rate schedule, rate, charge, classification or service effective or applicable to a sale subject to the jurisdiction of the Commission as of June 7, 1954, and on file with the Commission, or required to be filed pursuant to Section 154.92, or in any rate schedule, rate, charge, classification or service effective or applicable to a sale subject to the jurisdiction of the Commission initiated subsequent to June 7, 1954, on file with the Commission, or required to be filed with the Commission pur-

suant to Section 154.92 shall be filed with the Commission in triplicate not less than 30 days nor more than 90 days prior to the date such change in rate schedule is proposed to be made effective. [Paragraph (b) amended by Order 302, 23 F. R. 3715, May 29, 1958]

(c) The operation of any provision of the rate schedule providing for future or periodic changes in the rate, charge, classification, or service after June 7, 1954, or the operation of any like provision in any initial rate schedule filed after June 7, 1954, shall constitute a change in rate schedule.

(d) Any change in any rate schedule, rate, charge, classification, or service provided in a rate schedule in effect on June 7, 1954, which by the terms of said rate schedule is to be operative after June 7, 1954, and prior to September 15, 1954, may be filed on less than thirty days' prior notice, subject nevertheless to the right of the Commission to suspend any such proposed change, if the Commission in any case shall, within thirty days after the date of filing, find it necessary to suspend such proposed change. If any such proposed change is suspended, the suspension period will begin with the designated effective date of such change.

(e) With each change in rate schedule there shall be submitted reasons, nature, and basis for the proposed change, and the following information and data: (i) the date on which such filing is proposed to be made effective; (ii) a comparative statement of sales made and revenues therefrom by months under the then effective rate schedule and under the proposed changed rate schedule, or rate, charge, classification or service contained therein for the 12 months immediately preceding and for the 12 months immediately succeeding the proposed effective date of the rate schedule tendered for filing. Actual data shall be used wherever possible and any estimates shall be so designated and explained. The statement shall be subdivided by customers and delivery points when more than one is involved.

(f) If the proposed change in a rate schedule will result in an increase in a rate or charge, there shall also be submitted a full statement in support of such increase. A complete copy of all material shall be furnished to each party to the rate schedule. With each such filing there shall be submitted a list of the parties to whom such material has been mailed.

(g) Every independent producer who transports or sells less than 100,000 Mcf annually of natural gas subject to the jurisdiction of the Commission may, in lieu of the requirements of the foregoing paragraphs in this section, file a statement showing (1) the approximate annual volume involved; (2) the rate charged therefor; (3) the name of the purchaser; and (4) the geographical location (field, county and State) at which delivery is made.

154.95 Oral agreements

If any rate schedule or change in a rate schedule is not in writing, its terms shall be reduced to writing and filed with the Commission. If the parties are not able to agree to the precise terms within a reasonable time, the applicant shall file, in triplicate, a statement of his understanding of the agreement, serving a copy thereof on the other parties to the agreement. Such other parties, in the latter event, may subsequently file, in triplicate, their understanding of the agreement. [Section 154.95 amended by Order 202, 23 F. R. 3715, May 29, 1958]

154.96 Filing date

Filing date means the day on which a rate schedule, or a change in rate schedule, is received in the office of the Secretary of the Commission in compliance with the requirements of Section 154.92 through 154.99 of these Regulations.

154.97 Cancellation or termination

When a rate schedule or part thereof is proposed to be cancelled or is to terminate by its own terms and no new

rate schedule or part thereof is to be filed in its place, the filing company shall notify the Commission of the proposed cancellation or termination at least 30 days prior to the proposed effective date of such cancellation or termination. With such notice the company shall submit a statement showing the reasons for the cancellation or termination and a certification that such notice of cancellation or termination has been served on the affected party or parties, together with names of parties to whom the notice has been mailed.

154.98 Waiver of notice requirements

Upon application and for good cause shown, the Commission may by order provide that a rate schedule or a change in rate schedule shall be effective on less than 30 days notice. The Commission upon request and for good cause shown may permit a rate schedule or a change in rate schedule to be filed prior to 90 days before the effective date.

154.99 Number of copies; material to be submitted with changes in rate schedules

Three copies of any rate schedule or part thereof, and material required by Section 154.95 to be filed therewith, and Notices of Cancellation or Termination submitted for filing, must be supplied to the Commission. The Commission reserves the right to request additional copies. All copies are to be included in a single package, insofar as possible, together with a letter of transmittal and other material and information required by these rules, addressed to the Secretary of the Federal Power Commission, Washington 25, D. C. Such letter of transmittal shall contain a complete list of all material being filed, properly designated so that each item is easily identifiable. [Section 154.99 amended by Order 195, 22 F. R. 1329, Mar. 5, 1957]

154.100 Rejection of rate schedules and material submitted for filing

The Commission reserves the right to reject any rate schedule or material submitted for filing which fails to comply with the requirements of Sections 154.92 through 154.99.

154.101 Acceptance for filing not approval

Acceptance for filing of any rate schedule or part thereof, or of a Notice of Cancellation or Termination, is not to be construed as approval by the Commission, nor to serve in lieu of any requirements under Section 7 of the Natural Gas Act.

154.102 Applicability of Sections 154.92 through 154.101

Sections 154.92 through 154.101 hereof shall be applicable only to those persons specified in Section 154.91 hereof.

FILE COPY

Office Supreme Court, U.S.
FILED
MAR 19 1961
JAMES R. BROWNING, Clerk

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 80

PAN AMERICAN PETROLEUM CORPORATION, a Delaware Corporation,
Petitioner,
v.
THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE sitting as a Judge of That Court, and CITIES SERVICE GAS COMPANY, a Delaware Corporation,
Respondents.

No. 81

TEXACO, INC., a Delaware Corporation,
Petitioner,
v.
THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE sitting as a Judge of That Court,
Respondents,
and
CITIES SERVICE GAS COMPANY, a Delaware Corporation,
Intervening Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE

MOTION OF ATCHISON, CHANUTE, CHERRYVALE, ERIE, GIRARD, GRENOLA, HOWARD, ALL BEING POLITICAL SUBDIVISIONS OF THE STATE OF KANSAS, AND CARTHAGE, CLINTON, CARL JUNCTION, JOPLIN, MARSHALL, NEOSHO, NEVADA, ORONOGO, PIERCE CITY, PLATTE CITY, ST. JOSEPH, SPRINGFIELD, WAVERLY, WEBB CITY, KANSAS CITY AND INDEPENDENCE, ALL BEING POLITICAL SUBDIVISIONS OF THE STATE OF MISSOURI, FOR LEAVE TO FILE BRIEF AMICI CURIAE IN SUPPORT OF RESPONDENTS.

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The municipalities which are the Movants are political subdivisions of the States of Kansas and Missouri and the brief *amici curiae* is sponsored by the respective

law officers of each of the municipalities, and therefore, submitted and filed as a matter of right under Rule 42 (4). However, the municipalities out of an abundance of caution file this Motion for leave to file their brief *amici curiae* and set forth their interest and reason for the participation of the municipalities.

The municipalities are located in the States of Kansas and Missouri. Each is served by a natural gas distribution system which purchases natural gas from Respondent Cities Service Gas Company (Cities Service) for resale to the residents of the municipalities.[1] The rates paid to Cities Service by such distribution systems for natural gas determines, in large measure, the rates which are paid for the natural gas by the residents of the municipalities. In turn, the natural gas rates charged by Cities Service are substantially determined by the cost to it of gas purchased from natural gas producers including Petitioners. In the event Cities Service receives the $10,436,000.00 (R. 237, 58) sued for, the municipalities served with gas through various distributors served by Cities Service and their resident gas consumers will be entitled to and will receive over $7,000,000.00 in refunds (FPC Docket G-2410, R. 556-586) from Cities Service, of which these municipalities and their citizens will receive the larger part.

Since September 23, 1954, the rates which have been paid by the distributors of gas in the municipalities to Cities Service have been those fixed pursuant to an Order

[1] In the case of the municipalities of Chanute, Kansas; Howard, Kansas; Oronogo, Missouri; and Springfield, Missouri, gas is distributed in such cities by a distribution system owned by the named municipalities. In the other named municipalities, gas is distributed to the residents of the city by privately owned distribution companies, which companies are customers of Cities Service Gas Company.

of the Federal Power Commission in FPC Docket G-2410, issued May 25, 1956 (R. 556, *et seq.*), approving a settlement of litigation which had been commenced before the Federal Power Commission by Cities Service's Application for increased rates, filed on May 23, 1954. The municipalities were active participants in this litigation. It appeared in the litigation that one of the important elements in the establishment of the rate was the cost to Cities Service of gas purchased in the Kansas-Hugoton Field.

All of the gas purchased in the Kansas-Hugoton Field was contracted for by Cities Service with producers, including Petitioners Pan American Petroleum Corporation and Texaco, Inc., under long-term contracts providing for fixed prices. The price in the gas purchase contracts between Cities Service and the Petitioners herein was approximately 8.4¢ per Mcf at 16.4= p.s.i.a. Notwithstanding these contractual prices and arrangements, the Kansas Corporation Commission issued its Order, effective January 1, 1954, requiring the payment of 11¢ per Mcf at 14.65= p.s.i.a. for all gas purchased in the Kansas-Hugoton Field (R. 261). Cities Service timely challenged the validity of this Kansas Minimum Price Order and perfected proceedings for its judicial review. This judicial review proceeding was still pending in the Courts of the State of Kansas, on May 23, 1956, when Cities Service's rate case settlement in FPC Docket G-2410 was approved by the Federal Power Commission and it was undetermined whether the cost to Cities Service for gas produced in the Kansas-Hugoton Field was the state-fixed price of 11¢ at 14.65= p.s.i.a. (if the Kansas Minimum Price Order were ultimately determined to be valid), or was the lower gas

purchase contract price of 8.4¢ at 16.4# p.s.i.a. (if the Kansas Minimum Price Order were ultimately determined to be void).

In recognition of this undetermined effect of the Kansas Minimum Price Order upon Cities Service's gas purchase costs, the Federal Power Commission, in approving the settlement of Cities Service's rate case, approved rates based on the ordered price but provided that refunds which it received on account of the Order's invalidity should be passed on to its jurisdictional customers in accordance with the formula set out in the settlement order (R. 571-573).

On January 20, 1958, in *Cities Service Gas Company* v. *Kansas Corporation Commission*, 355 U.S. 391, this Court held that the Kansas Corporation Commission's Minimum Price Order was void. Shortly thereafter, Cities Service commenced these cases and similar cases against other producers to collect the refunds of overpayments which it had made to producers in the Kansas-Hugoton Field during the pendency of litigation challenging the validity of the Order.

Several of these refund cases have been concluded and substantial amounts in refunds have been received by Cities Service. To date, approximately $1,736,076.00 of these refunds have been distributed by Cities Service to its customers, including the distributors serving these municipalities. The Kansas Corporation Commission and the Missouri Public Service Commission have actively participated in providing for the further distribution of such refunds to the ultimate consumers of natural gas.

Amici Curiae are aware that these cases involve only the review of the judgment of the Superior Court of Delaware denying the Petitioners' Application for a Writ of Prohibition to the trial court in which Cities Service's cases were commenced, and do not concern the merits of Cities Service's action for refund, but only the jurisdiction of the Superior Court of New Castle County to hear and determine the cases in the first instance. However, they fear that if the Petitioner's position that the state court has no jurisdiction in the instant case is upheld, their right to refunds under FPC Order G-2410 will become the classic example of a right without a remedy because every Federal court to which similar claims have been presented has denied jurisdiction: *e.g.*, *Cities Service Gas Co.* v. *Skelly Oil Co.*, 165 F. Supp. 31 (D.C. Del., 1958), and the Federal Power Commission has determined that it is neither necessary nor appropriate for the Commission to determine the effective rate for sales to Cities Service from the Kansas-Hugoton Field during the period in question (Pan American Petroleum Corporation, Federal Power Commission Docket No. G-4904, Order December 1, 1960).

WHEREFORE, the municipalities being vitally concerned, pray their Motion for Leave to File the attached *Brief Amici Curiae* in support of Respondents be granted.

Respectfully submitted.

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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 80

PAN AMERICAN PETROLEUM CORPORATION, a Delaware Corporation,
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THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE sitting as a Judge of That Court, and CITIES SERVICE GAS COMPANY, a Delaware Corporation,
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CITIES SERVICE GAS COMPANY, a Delaware Corporation,
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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE

BRIEF FOR CITIES OF ATCHISON, CHANUTE, CHERRYVALE, ERIE, GIRARD, GRENOLA, HOWARD, ALL BEING POLITICAL SUBDIVISIONS OF THE STATE OF KANSAS, AND CARTHAGE, CLINTON, CARL JUNCTION, JOPLIN, MARSHALL, NEOSHO, NEVADA, ORONOGO, PIERCE CITY, PLATTE CITY, ST. JOSEPH, SPRINGFIELD, WAVERLY, WEBB CITY, KANSAS CITY AND INDEPENDENCE, ALL BEING POLITICAL SUBDIVISIONS OF THE STATE OF MISSOURI, AMICI CURIAE IN SUPPORT OF RESPONDENTS, THE SUPREME COURT OF DELAWARE IN AND FOR NEW CASTLE COUNTY, THE HONORBALE ANDREW D. CHRISTIE, SITTING AS JUDGE OF THAT COURT, AND CITIES SERVICE GAS COMPANY, A DELAWARE CORPORATION.

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United Gas Pipe Line Co. v. Mobile Gas Service Corporation, 350 U.S. 332 (1956) 4, 9-10, 11, 12

STATUTES:

Natural Gas Act, 52 Stat. 821, 15 U.S.C., Sec. 717, *et seq.* 2

Section 4 9, 11

Section 5 11, 16

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MISCELLANEOUS:

Socony Mobil Oil Company, Inc., Federal Power Commission Docket No. G-16717, Order Denying Petition for Determination of Effective Rate, November 22, 1960, Order Denying Application for Rehearing, January 24, 1961 5

Pan American Petroleum Corporation, Federal Power Commission Docket No. G-4904, Order December 1, 1960 5

In the
Supreme Court of the United States
OCTOBER TERM, 1960

No. 80

PAN AMERICAN PETROLEUM CORPORATION, a Delaware Corporation,
Petitioner,
v.
THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE sitting as a Judge of That Court, and CITIES SERVICE GAS COMPANY, a Delaware Corporation,
Respondents.

No. 81

TEXACO, INC., a Delaware Corporation,
Petitioner,
v.
THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE sitting as a Judge of That Court,
Respondents,
and
CITIES SERVICE GAS COMPANY, a Delaware Corporation,
Intervening Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE

BRIEF FOR ATCHISON, CHANUTE, CHERRYVALE, ERIE, GIRARD, GRENOLA, HOWARD, ALL BEING POLITICAL SUBDIVISIONS OF THE STATE OF KANSAS, AND CARTHAGE, CLINTON, CARL JUNCTION, JOPLIN, MARSHALL, NEOSHO, NEVADA, ORONOGO, PIERCE CITY, PLATTE CITY, ST. JOSEPH, SPRINGFIELD, WAVERLY, WEBB CITY, KANSAS CITY AND INDEPENDENCE, ALL BEING POLITICAL SUBDIVISIONS OF THE STATE OF MISSOURI, AMICI CURIAE IN SUPPORT OF RESPONDENTS, THE SUPREME COURT OF DELAWARE IN AND FOR NEW CASTLE COUNTY, THE HONORABLE ANDREW D. CHRISTIE, SITTING AS JUDGE OF THAT COURT, AND CITIES SERVICE GAS COMPANY, A DELAWARE CORPORATION.

OPINIONS BELOW

The opinion of the Superior Court of Delaware in and for New Castle County (R. 8-21) is reported at 155 A.2d

879. The opinión of the Supreme Court of Delaware (R. 33-46) is reported at 158 A.2d 478.

JURISDICTION

The jurisdictional requisites are set forth in the Petition for *Certiorari*. *Certiorari* was granted by this Court on June 13, 1960. This brief is filed by the aforementioned cities as *amici curiae* in accordance with paragraph (4) of Rule 42, being presented by political subdivisions of the States of Kansas and Missouri, who are, or whose residents are, jurisdictional customers of Respondent Cities Service Gas Company and have an interest in the refunds sued for under an order of the Federal Power Commission (See *In re Cities Service Gas Company*, 15 F.P.C. 1448, 1453-58), and is sponsored by the authorized law officers of such political subdivisions.

QUESTION PRESENTED

Whether a State Court is precluded by Section 22 of the Natural Gas Act from exercising jurisdiction in actions based on common-law theories to recover payments for gas in excess of the agreed contract price for such gas because Defendant alleges, among other defenses, a defense based on the Natural Gas Act.

STATUTE INVOLVED

The provision of the Federal statute involved is Section 22 of the Natural Gas Act, 52 Stat. 833 (1938), 15 U.S.C. 717 (u). The portion of said statute involved herein reads as follows:

"The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States Courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation or order thereunder. * * *"

STATEMENT

The interest of these *amici curiae* in this proceeding arises out of the rights of the cities of Altamont and Howard, Kansas and the City of Springfield, Missouri, to refunds of a portion of the money sought to be obtained by Cities Service Gas Company as a result of this litigation, in accordance with the May 25, 1956 order of the Federal Power Commission entered in *In re Cities Service Gas Company*, 15 F.P.C. 1448, 1453-58, and of the interests of the ratepayers, citizens of the other named cities, in the refunds to be made to the private utilities serving such cities in accordance with said order as set forth in their Motion for Leave to File Brief in Support of Respondents. The *amici curiae* adopt the statement appearing in the brief of the Respondent Cities Service Gas Company.

SUMMARY OF ARGUMENT

The sole issue before this Court is whether the state trial court has jurisdiction to hear and determine the issues in these cases. In the trial court, the Plaintiff Cities Service stated its cause of action on common-law theories of contract, unjust enrichment and restitution as admitted

in the petitions for Writs of *Certiorari* filed in this Court. The Defendants pleaded, among other defenses, that the filing of their gas rate schedules, including their contracts with the Plaintiff, with the Federal Power Commission committed exclusive jurisdiction over these cases to the Federal Courts under Section 22 of the Natural Gas Act. The allegations of Plaintiff's complaint are the test of jurisdiction and as, admittedly, they state a common-law cause of action, jurisdiction is laid in the state courts, regardless of the allegations of Defendant's answer attempting to inject questions of federal law into the litigation via their "filed rate" defense.

The rights of Cities Service against these petitioners arise out of their common law contracts with petitioners which, subject to the requirements for notice by filing with the Federal Power Commission, are not affected by the Natural Gas Act, as this Court recognized in *Mobile*.[1] As natural gas companies are still as free to enter into rate contracts as they were before the adoption of the Act, the interpretation of such contracts is a matter of contract law which may properly be determined by state courts. Section 22 of the Natural Gas Act applies only to suits brought to enforce liabilities created by the Act or regulations of the Federal Power Commission. It has no application to cases where the action is a common-law one arising out of an initial rate established by contract alone with respect to which there has been no action of the Commission under Section 5(a) of the Act.

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[1] *United Gas Pipe Line Co. v. Mobile Gas Service Corporation*, 350 U.S. 332 (1956).

The Petitioners' argument that a judgment for the Plaintiff in the trial court would be contrary to their filed rate schedules and therefore the trial court is without jurisdiction confuses jurisdiction to enter a judgment with the merits of such judgment, which latter question is not presently before this Court. The trial court if it has jurisdiction to enter any judgment has jurisdiction to enter either a correct or an erroneous judgment, subject to review. The Petitioners also confuse the contract or initial rate filed with the Federal Power Commission with such rate as modified by the invalid Kansas Minimum Price Order which, after being struck down by this Court, could have no effect on the contract or initial rates. A judgment for Plaintiffs in this case would involve neither a collateral attack on the contract nor filed rate schedule nor the determination of a reasonable rate but only the determination of what is the common-law contract rate filed by the Petitioners, which is unaffected by the Natural Gas Act.

Petitioners herein, recognizing that the Federal Power Commission will not determine the effective rate[2] or require the refunds to be made to Cities Service because it has no reparations power and that every Federal District Court presented with the question has held that Federal Courts do not have jurisdiction of claims such as Cities

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[2] *Socony Mobil Oil Company, Inc.*, Federal Power Commission Docket No. G-16717, Order Denying Petition for Determination of Effective Rate, November 22, 1960, and Order Denying Application for Rehearing, January 24, 1961; *Pan American Petroleum Corporation*, Federal Power Commission Docket No. G-4904, Order December 1, 1960, printed in Appendix.

Service is making in these cases,[3] seek to retain moneys which they collected by authority of a law held invalid by this Court,[4] by attacking the jurisdiction of the state court to adjudicate Cities Service's rights to a refund of such moneys and thus depriving Cities of any tribunal in which its claims may be adjudicated. If the jurisdiction of the state court to determine such purely common-law rights is not affirmed, Petitioners will have succeeded in unjustly enriching themselves by retaining a windfall of the vast sums collected by them solely under the authority of a void law at the cost not only of Cities Service but of each of the *amici curiae*.

ARGUMENT

I.

State courts have jurisdiction to determine Federal Questions raised defensively.

The suits of the Plaintiff, Cities Service, were brought to enforce common-law liabilities for restitution, unjust enrichment and upon a contract and it has been recognized by all parties during the entire course of this litigation that the Plaintiff's complaints stated only causes of action to enforce such common-law liabilities. See: Pan American's petition for Writ of *Certiorari*, pages 3-8; Pan American's brief in the trial court (R. 616); Texaco's petition for Writ of *Certiorari*, pages 2, 5 and 6; Texaco's brief

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[3] *Cities Service Gas Co.* v. *Skelly Oil Co.*, 165 F. Supp. 31 (D.C. Del., 1958); *Northern Natural Gas Co.* v. *Cities Service Oil Co.*, 182 F. Supp. 155 (D.C. Iowa, 1959); *Pan American Petroleum Corp.* v. *Cities Service Gas Co.*, 182 F. Supp. 439 (D.C. Kan., 1959).

[4] *Cities Service Gas Company* v. *State Corporation Commission*, 355 U.S. 391 (1958).

in the trial court (R. 230); Defendants' Motions for Summary Judgment (R. 170, 656). The Defendants, among other defenses, pleaded their "filed rate schedules" under the Natural Gas Act and now contend that by the raising of such defenses the state court was ousted of jurisdiction by Section 22 of the Natural Gas Act which gives exclusive jurisdiction to the Federal Courts in suits arising out of the Act. The record and the decided cases clearly indicate that these suits did not arise out of the Natural Gas Act but rather only that the Petitioners' defenses are based on said Act.

The Congress and this Court have consistently accepted state courts as proper tribunals for the determination of federal questions injected into cases as a matter of defense.

As Justice Cardozo said in *Gully* v. *First National Bank in Meridian*, 299 U.S. 109 (1936), "Not every question of federal law emerging in a suit is proof that a federal law is the basis of the suit." It has long been recognized that federal jurisdiction does not exist unless it appears from the outset from the declaration of the party suing that the suit depends on some question of a federal nature, *Metcalf* v. *City of Watertown*, 128 U.S. 586, (1888); and that state courts have jurisdiction to determine federal questions raised as a matter of defense, *Pratt* v. *Paris Gaslight and Coke Co.*, 168 U.S. 255 (1897); *New Marshall Engine Co.* v. *Marshall Engine Co.*, 223 U.S. 473 (1912); *State of Arkansas* v. *Kansas & Texas Coal Co.*, 183 U.S. 185 (1901); annotation in 167 A.L.R. 1114; *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667 (1950). The single test of jurisdiction is the allegation of the plaintiff's com-

plaint, *Henry* v. *A. B. Dick Co.*, 234 U.S. 1, 16 (1912); *Taylor* v. *Anderson*, 234 U.S. 74, 75 (1914). The defense of illegality under the anti-trust law has been held to be adjudicable by a state court in an action for breach of contract, *E. Bemont & Sons* v. *National Harrow*, 186 U.S. 70 (1902). State courts have been held to have jurisdiction of actions to enforce contracts in which the subject is a patent despite the exclusive jurisdiction given federal courts of civil actions arising under any act of Congress relating to patents, *Henry* v. *A. B. Dick Co.*, *supra*. By analogy state courts may properly assume jurisdiction in a contract action where the defense raises a question of the validity or applicability of the rate provisions of a contract under a federal statute.

The argument raised by the petitioners that the exercise of jurisdiction by state courts to determine such federal questions involved herein destroy uniformity in the construction of the Natural Gas Act was conclusively rejected in *Great Northern Ry.* v. *Merchant's Elevator Co.*, 259 U.S. 285 (1922), wherein this Court pointed out that if the parties properly preserve their rights, a construction given by any court either state or federal may be ultimately reviewed by this Court either on writ of error or writ of *certiorari* and uniformity in construction thereby secured.

II.

The Respondent's suit is not one to enforce a liability or duty created by the Natural Gas Act with respect to which the Federal Courts have exclusive jurisdiction under Section 22 of the Act.

Section 22 of the Natural Gas Act preserves exclusive jurisdiction to the Federal Courts only of "'all suits in equity and action at law brought to enforce any liability or duty created by, or to impair any violation of, this chapter or any rule, regulation or order thereunder." The test of such exclusive jurisdiction simply stated is whether the action is to enforce a liability or duty created by the Natural Gas Act.

Petitioners erroneously contend that their filing with the Federal Power Commission in accordance with requirement for notice by filing of Section 4(c) of the Natural Gas Act, of the rates established by their contracts with Cities Service on which these suits were brought, transmuted Cities Service's rights under such contracts into rights and liabilities arising under the Natural Gas Act which are adjudicable only in Federal Courts. Such contention misconstrues and misapplies the prior decisions of this Court.

This Court in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corporation*, 350 U.S. 332 (1956) determined at the outset that the Natural Gas Act in marked contrast to the Interstate Commerce Act, on decisions with respect to which Petitioners so often rely, does not abrogate private rate contracts as such and decided that, subject to the requirements for notice by filing with the Commission,

such contracts are valid and binding and cannot be changed unilaterally by a party to the contract. It is submitted that this Court recognized that the Act provides no procedure for establishing or enforcing initial rates but only for notice to the Commission of the setting of such rates and for review of the reasonableness thereof under Section 5(a). This Court stated at page 343:

> "All of the relevant provisions of the Act can thus be fully explained as simply defining and implementing the power of the Commission to review rates set initially by natural gas companies and there is nothing to indicate that they were intended to do more. * * * The obvious implication is that, except as specifically limited by the Act, the rate-making powers of natural gas companies were to be no different from those they would possess in the absence of the Act; to establish ex parte and change at will, the rates offered to prospective customers; or to fix by contract, and change only by mutual agreement, the rates agreed on with a particular customer."

If, as this Court said, all of the relevant provisions of the Act simply define and implement the power of the Commission to review rates, the exclusive jurisdiction provision of Section 22, cannot be interpreted to preclude state courts from exercising jurisdiction over actions arising out of contracts unimpaired by the Act but merely filed with the Commission where, as in these cases, there has been no exercise by the Commission of its powers to review the reasonableness of such rates under Section 5(a). In *United Gas Pipe Line Co.* v. *Memphis Light, Gas & Water Division*, 358 U.S. 103 (1958), this over-all concept of the unimpairment of common-law contracts unre-

viewed under Section 5(a) expressed in *Mobile*, was affirmed when petitioner was allowed to assert its right to unilaterally change rates where such right had been specifically secured to it by its initial rate contract filed with the Commission. And affirmed again in *Atlantic Refining Co., Cities Service Production Company, Continental Oil Company, et al.* v. *Public Service Commission of State of New York (Catco)*, 360 U.S. 379 (1959), where this Court premised its decision on the fundamental principle of law that the Federal Power Commission is powerless to change prices fixed by filed contract except by review under Section 5(a) of the Natural Gas Act.

The rationale of *Mobile*, *Memphis* and *Catco* makes it clear that in the absence of a review proceeding under Section 5(a) the relationship between the parties is that established by their contracts and the filing and notice requirement of the Natural Gas Act does not in any way affect the rights of the parties by virtue of such contracts. Therefore, where the Commission has not exercised its review jurisdiction under Section 5(a) to set aside or modify such contract rights of the parties which initially derive from state law such rights retain their contractual nature, determinable in the state courts and cannot become liabilities or duties created by the Natural Gas Act, adjudication of which is reserved to the Federal Courts, solely because of the filing of the contracts with the Commission. Nothing the Commission does with respect to an initial rate filing can have any effect on the rates fixed by the contract filed. The jurisdiction to determine the duties and liabilities existing between petitioners and respond-

ents by virtue of such contracts and the unimpaired operation of common law must remain in the common-law forum, the state courts.

The Petitioners attempt to limit this Court's decision in *Mobile* to hold only that where a fixed rate contract exists, the unilateral filing of a change in rate may be set aside solely by timely protest before the Commission and judicial review in which such unilateral change of rate is required to be rejected. Such interpretation reduces the contract rights which this Court said are not impaired by the Natural Gas Act to a mere right to protest a rate change which exists in any event under the Act and ignores the entire rationale of this Court's opinion in *Mobile* and its specific language on pages 339 and 340:

> "Absent the Act, a unilateral announcement of a change to a contract would, of course, be a futility, and we find no basis in the language of Sec. 4(d) for inferring that the mere imposition of the filing and notice requirement was intended to make effective action which would otherwise be of no effect at all. In short, Sec. 4(d) on its face indicates no more than that otherwise valid changes cannot be put into effect without giving the required notice to the Commission."

Petitioners in relying on *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951), and *T.I.M.E. Incorporated* v. *United States*, 359 U.S. 464 (1959), as supporting their contention that the acceptance for filing by the Commission of the invalid Kansas Minimum Price Order operated to fix an initial rate different from the contract rate, misconceives these decisions in which an attack was made on the reasonableness of the

filed rate which this Court properly held could not be done in the courts in the first instance. Cities Service in the instant cases is not seeking to attack the reasonableness of the filed or contract rates. The holdings in these cases that the reasonableness of a rate is not to be determined by the courts does not in any way militate against the contention of Cities Service and *amici curiae* that under the Natural Gas Act the initial establishment of rates is within the exclusive control of the contracting parties and the determination thereof within the jurisdiction of the courts of the state whose laws govern such contracts.

That actions arising out of contracts with respect to gas rates are not actions arising under the Natural Gas Act even though their determination required an interpretation of the Act and the actions of the Federal Power Commission, was clearly perceived by both the majority and the dissenting opinions of this Court in *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667 (1950). This Court plainly held (at p. 672) that suits for damages or for specific performances of gas contracts were not assertions of federal rights for the simple reason that such suits would "arise" under the state law governing the contracts. Justices Vinson and Burton in their dissent even doubted there was a federal question presented at all even though interpretation of the contract between the parties required an interpretation of a federal statute and the action of a federal regulatory body. Surely a suit to collect an overpayment, or in restitution on unjust enrichment arising out of such contract is one arising under state law governing contracts, adjudicable in state courts.

The Federal Courts which have refused to remove state court actions based on such contracts have accepted the principle that suits based on gas rate contracts do not arise out of the Natural Gas Act in *Cities Service Gas Co. v. Skelly Oil Co.*, 165 F. Supp. 31 (D.C. Del. 1958); *Northern Natural Gas Co.* v. *Cities Service Oil Co.*, 182 F. Supp. 155 (D.C. Iowa 1959); *Pan American Petroleum Corporation* v. *Cities Service Gas Co.*, 182 F. Supp. 459 (D.C. Kansas 1959); and in *Natural Gas Pipeline Co.* v. *Harrington*, 246 F.2d 915, 5th Cir. 1957, *cert. denied*, 356 U.S. 957 (1958); wherein the Circuit Court though accepting federal jurisdiction on the ground of diversity of citizenship, clearly recognized that an action for the restitution of the difference between contract rates for the purchase of gas and the price paid under an invalid minimum rate order of the State Corporation Commission of Oklahoma, was founded not on the Natural Gas Act but on common-law principles of restitution of charges exacted in excess of the contract rates.

The absence of any provision in the Natural Gas Act specifically authorizing suits to recover overpayments of gas rates, such as found in the Interstate Commerce Act, further negates the contention that such suits are suits to enforce a duty or liability created by the Act.

III.

The trial court merely determined and applied the legally effective rate and neither established a rate nor adjudicated the reasonableness thereof.

Although the correctness of the decisions of the trial court is not before this Court at this time, Petitioners nevertheless argue that the trial court lacked jurisdiction because contrary to the decision in *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951), it adjudicated and applied as a legal rate one different from that on file with the Commission. This, of course, is not so. It neither adjudicated a rate nor determined a filed rate to be unreasonable. It merely determined what was the initial contract rate filed by the petitioners. The Petitioners in so contending erroneously assume that the Commission's acceptance for filing of the Kansas Minimum Price Order together with the contracts with Cities Service Gas Company and, in the case of Petitioner, Texaco, of the refund contract sued on, established the Kansas Minimum Price Order as the legally effective rate protected from any change by any court by the decision in *Montana-Dakota*. Such assumption is a brazen effort to revive the Kansas Minimum Price Order declared by this Court to be invalid in *Cities Service Gas Company* v. *State Corporation Commission*, 355 U.S. 391 (1958), and thereafter held to have been void *ab initio* by the Kansas Supreme Court in *Cities Service Gas Company* v. *Kansas Corporation Commission*, 184 Kan. 540, 337 P.2d 640 (1959), *cert. denied* 361 U.S. 836 (1959).

This specious argument of the Petitioners was recognized as such and struck down by the Tenth Circuit Court of Appeals in *Cities Service Gas Company* v. *Federal Power Commission*, 255 F.2d 860 (10th Cir., 1958), *cert. den.*, 358 U.S. 837 (1958). The Court there pointed out that a natural gas purchaser having paid the Kansas ordered rate while suing to have it declared invalid is in no worse position than the consumer in *Mobile* which was aggrieved by the filing of a unilaterally increased rate initiated by its producer, since the Act abrogates none of the usual contract rights except for the Commission's review powers on hearing and held that when this Court invalidated the Kansas Minimum Price Order there was no longer any legal order which could modify the contract rate and that therefore the contract rate was the effectively filed rate. See also: *Natural Gas Pipe Line Company of America* v. *Federal Power Commission*, 253 F.2d 3 (3rd Cir., 1958), *cert. den.*, 357 U.S. 44 (1958).

The trial court did not presume to determine the reasonableness of the rate filed, recognizing that under *Montana-Dakota* the jurisdiction of the Commission to do so is exclusive. It merely determined that subsequent to this Court's invalidation of the Kansas Minimum Price Order, the filed rates protected by *Montana-Dakota* were the contract rates filed with the Commission unchanged by the void Kansas Minimum Price Order, which contract rates under *Mobile* could not be varied by any act of the Commission except modification after a hearing and finding of unlawfulness under Section 5(a). The Supreme Court of Delaware held merely that the trial court is competent to in-

terpret the federal law and determine what were the filed rates when urged as a defense to an action based on such rights. This is in accord with the opinion of this Court in *Great Northern Ry.* v. *Merchant's Elevator Co.*, 259 U.S. 285 (1922).

CONCLUSION

The order of the Federal Power Commission (15 F.P.C. 1448, 1454-6) was entered to protect *amici curiae* and to assure them and their citizen gas users of the advantage of the contract rates between Petitioners and Respondent Cities Service Gas Company; such order recognizing the validity of the contract rates should the Kansas Minimum Price Order be held invalid in the then pending litigation which resulted in this Court holding such Kansas Minimum Price Order invalid. As the Natural Gas Act does not abrogate private contracts and natural gas companies may set rates by contract, state courts have jurisdiction to entertain common-law causes of action based on such contracts and may determine and apply in such causes of action the rates established by contract, interpreting federal law to determine federal questions raised defensively or incidental to the cause of action presented by the petition filed in the state court. *Amici curiae* submit that to hold otherwise would deprive them of their rights to refunds from Cities Service Gas Company assured them by Federal Power Commission order, and give to the Petitioners herein a windfall in the amount of $10,760,000 largely at the expense of *amici curiae* and their hundreds of thousands of rate-

payers by assuring to Petitioners the retention of a price which this Court has already held to have been illegal from its very inception. The judgment of the Supreme Court of Delaware is in accord with the decisions of this Court and should be affirmed.

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Springfield, Missouri,
Attorneys for Amici Curiae.

APPENDIX

APPENDIX A

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, Arthur Kline and Paul A. Sweeney.

Socony Mobil Oil Company, Inc.)
(formerly Magnolia Petroleum)
Company))

ORDER DENYING PETITION FOR DETERMINATION OF EFFECTIVE RATE

(Issued November 22, 1960)

On October 20, 1958, Magnolia Petroleum Company, now merged into Socony Mobil Oil Company, Inc., and hereinafter referred to as Socony Mobil, filed a petition with the Commission requesting that we enter on a hearing to determine what was its effective rate on June 7, 1954, for the sale of gas to Cities Service Gas Company (Cities Service) from the Hugoton Field, Kansas, and issue a declaratory order stating the same. Alternatively, Socony Mobil requests that the Commission on its own motion institute a hearing under Section 5(a) of the Natural Gas Act (Act) to determine the just and reasonable rate for the sale to Cities Service. The sale in question is made under Socony Mobil's FPC Gas Rate Schedule No. 3.[1]

The facts disclose that on February 19, 1957, Socony Mobil tendered for filing with the Commission its gas sales contract dated June 17, 1946, covering the aforesaid sale of gas to Cities Service. This contract, which was for a 20-

[1] Formerly designated Magnolia Petroleum Company FPC Gas Rate Schedule No. 3.

year term, called for a price of 6 cents per Mcf initially (16.4 pounds psia). Concurrently, Socony Mobil tendered for filing with the Commission certain supplements to the contract, including a copy of an order issued on December 2, 1953, by the State Corporation Commission of Kansas, providing for a minimum price for gas at the wellhead in the Hugoton Field of 11 cents per Mcf (14.65 pounds psia). By order issued May 17, 1957, we accepted for filing this contract and the supplements thereto. Cities Service sought judicial review of the Commission's action accepting this Kansas minimum price order as part of Socony Mobil's Rate Schedule, and the court, finding that the Kansas order had been held invalid by the Supreme Court in *Cities Service Gas Company* v. *State Corporation Commission of Kansas*, 355 U.S. 391, reversed the Commission and remanded the cause with directions to the Commission to strike the aforesaid Supplement No. 26 from its files. *Cities Service Gas Company* v. *F.P.C.*, 255 F.2d 860, *cert.* den., 358 U.S. 837.

In accordance with the court's directions, by letter to Socony Mobil dated October 12, 1960, the Commission advised Socony Mobil that Supplement No. 26 had been stricken from the files of the Commission and returned the supplement to the company. Socony Mobil has returned to the Commission our letter and the stricken supplement, stating that in view of the pendency of the instant proceeding, our striking of the supplement was "premature."

As grounds for its request that we determine the rate for the sale to Cities Service, Socony Mobil contends that the Commission's action striking Supplement No. 26 from its file will not remove the uncertainty as to the rate in effect on June 7, 1954, for this sale. The company contends that the Commission has recognized in Docket No. R-168[2]

[2] Docket No. R-168 involves a rule-making proceeding we instituted by notice issued April 28, 1958, for determining whether to amend our Regulations under the Natural Gas Act or take some other action in the light of the Supreme Court's reversal of the State minimum price orders.

that many questions must be determined in view of the Supreme Court's decision in *Cities Service Gas Company* v. *State Corporation Commission of Kansas*, 355 U.S. 391, declaring invalid the Kansas minimum price order. The company argues that a pending declaratory action in the United States District Court for the District of Kansas makes it imperative that the Commission determine the issue of its effective rate schedule. It further contends that under *Phillips Petroleum Co.* v. *F.P.C.*, 258 F.2d 906, it is entitled to a hearing to determine its effective rate on June 7, 1954, since this matter was never determined by the Commission or the courts. And it asserts that in view of Cities Service's voluntary payment of the 11-cent price and other circumstances, that company is estopped from contending that the amounts due under Rate Schedule No. 3 on and after June 7, 1954, are at the rate of 6 cents as originally provided in the contract.

Cities Service on November 28, 1958, filed a motion to dismiss or reject Socony Mobil's petition, contending that the action pending in the District Court in Kansas involves substantially the same subject matter involved herein and the court has exclusive jurisdiction to determine such matters; that the Commission is without jurisdiction to determine the legal questions which are involved in this proceeding; and that there is no uncertainty or ambiguity as to the filed rate here concerned.

We conclude that Socony Mobil's petition should be denied. Furthermore, the decision of the court in the Cities Service case in 255 F.2d 860, *supra*, is explicit that we must strike the Kansas order, Supplement No. 26 from our files, and this action we have already taken. In addition, as indicated above, litigation is pending in the United States District Court in Kansas respecting the controversy between Socony Mobil and Cities Service arising from the invalidation of the Kansas minimum price order. In view of these

circumstances, it is neither necessary nor appropriate for us, at least at this time, to undertake to determine the rate for this sale.

Socony Mobil's Supplement No. 26 returned to the Commission by Socony Mobil shall be returned to the company.

The Commission orders:

Socony Mobil's petition for determination of its effective rate to Cities Service, filed in this proceeding on October 20, 1958, is hereby denied.

By the Commission.

/s/ J. H. Gutride
Joseph H. Gutride,
Secretary.

APPENDIX B

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, Arthur Kline and Paul A. Sweeney.

Socony Mobil Oil Company, Inc. (formerly Magnolia Petroleum Company)	)	Docket No. G-16717

ORDER DENYING APPLICATION FOR REHEARING
(Issued January 24, 1961)

On December 20, 1960, Socony Mobil Oil Company, Inc., filed an application for rehearing of the Commission's order issued herein on November 22, 1960, denying its petition for determination of the effective rate on June 7, 1954, for the sale of gas to Cities Service Gas Company from the Hugoton Field, Kansas. The Kansas minimum price orders having been held invalid by the United States Supreme Court, dispute has arisen between these two companies as to the correct price for this sale. In our order of which rehearing is sought, we pointed out that we have stricken the invalid Kansas order from our files, in accordance with judicial instructions. We further pointed out that litigation is pending in the United States District Court in Kansas respecting the controversy between Socony Mobil and Cities Service arising from the invalidation of the Kansas order. Accordingly, we held that it is neither necessary or appropriate for the Commission, at least at this time, to undertake to determine the rate for this sale. These reasons are still sound and we adhere to this decision.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed herein on December 20, 1960, by Socony Mobil Oil Company, Inc., set forth no new facts or principles of law which were not fully considered by the Commission when it issued its order of November 22, 1960, or which, having now been considered, warrant any change in or modification of the said order.

The Commission orders:

The application for rehearing of the Commission's order issued November 22, 1960, filed herein by Socony Mobil Oil Company, Inc., on December 20, 1960, is hereby denied.

By the Commission.

/s/ J. H. Gutride
Joseph H. Gutride,
Secretary.

APPENDIX C

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, Arthur Kline and Paul A. Sweeney.

Pan American Petroleum Corporation (formerly Stanolind Oil and Gas Company)	Docket No. G-4904

ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AND GRANTING IN PART AND DENYING IN PART APPEAL AND MOTIONS

(Issued December 1, 1960)

This proceeding involves an application filed by Pan American Petroleum Corporation (Pan American)[1] for a certificate of public convenience and necessity under subsections (c) and (e) of Section 7 of the Natural Gas Act (Act) authorizing the sale of natural gas to Cities Service Gas Company (Cities Service). The case is now before us by virtue of an appeal by Pan American from certain rulings of the presiding examiner at the hearing. The company's appeal, which was filed on November 10, 1958, is accompanied by motions that we order the record certified to the Commission, reverse certain rulings by the examiner, grant a continuance, and specify the issues to be heard. For the reasons hereinafter set forth, we are granting the motion that the record be certified to the Commission; and on the basis of the record, we are reversing the examiner's rulings complained of and shall hereinafter issue to Pan

[1] At the time the filing was made, the company's name was Stanolind Oil and Gas Company, the change to Pan American was made on February 1, 1957.

American a certificate of public convenience and necessity. In the light of this action, Pan American's other requests shall be denied.

The sale to Cities Service covered by Pan American's certificate application, which was filed with the Commission on November 16, 1954, is of gas from the Hugoton Field in Kansas.[2] In accordance with the Commission's Regulations, Pan American filed with its application a copy of its gas sales contract with Cities Service. The contract, which was dated June 23, 1950, and which was for a term of 20 years, provided for an initial price to Cities Service of 8.4 cents per Mcf (16.4 psia). Concurrently, Pan American filed with its application a copy of a minimum price order of the State Corporation Commission of Kansas, issued December 2, 1953, prescribing a price for sales from the Kansas Hugoton Field of 11 cents per Mcf (14.65 psia).

Likewise, on November 16, 1954, Pan American tendered for filing with the Commission as its rate schedule a copy of its aforesaid contract with Cities Service, which contract was accepted by the Commission and designated Pan American's FPC Gas Rate Schedule No. 84. Certain supplements filed with the contract included a copy of the aforesaid Kansas minimum price order, which the Commission designated as Supplement No. 77 to Rate Schedule No. 84.

Pan American's certificate application was set for hearing on September 9, 1958, under the Commission's shortened procedure. However, the intervention by Cities Service made a contested hearing necessary. The hearing was commenced on November 4, 1958, and continuing on No-

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[2] The sale in question was being made on June 7, 1954, the date of the Supreme Court's decision in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, and the cut-off date under our Regulations issued in pursuance thereof.

vember 6, 1958, was recessed on that date to resume subsequently. No further hearing has been held.

At the hearing, all parties and staff counsel agreed that a certificate authorizing the sale by Pan American to Cities Service should be granted. Only one matter was contested, namely, what was the price on June 7, 1954, for this sale. Pan American took the position that the correct price for the sale was then 11 cents per Mcf as provided by the Kansas minimum price order, Supplement No. 77. Cities Service took the position that the correct price was 8.4 cents per Mcf, as provided by the parties' original contract, Pan American's Rate Schedule No. 84. This dispute, however, the parties would have eliminated by their proposal on November 5, 1958, at the hearing, to enter into a stipulation providing, in effect, that a certificate should be granted but that the grant thereof would not determine the price issue and was without prejudice to the rights of either of the parties with respect to this issue.

However, the examiner refused to permit such a stipulation, ruling in essence that the question of what was the price for this sale on June 7, 1954, was in issue herein; that it was necessary to resolve this issue in this certificate proceeding; and that the parties by stipulation could not remove this issue from the case. Accordingly, the examiner directed that the hearing should subsequently be resumed with respect to this issue.

Pan American's appeal herein is aimed primarily at the above rulings of the examiner. The company contends that the price dispute between it and Cities Service need not be determined in this case, and should not be, in view of the pendency of litigation respecting this matter in the Kansas courts. Pan American also alleges that assuming the issue is properly to be determined here, the examiner erred in refusing to issue subpoenas requiring the appearances of certain witnesses claimed to be needed to testify

respecting the price issue, in refusing to grant a longer continuance to permit the preparation of Pan American's case on the price issue, and in other respects.

Cities Service filed a response to Pan American's appeal on November 21, 1958. This company takes the position that Pan American introduced the price issue by its allegation in its application that the proper rate for the sale was 11 cents, which allegation Cities Service denies; that the courts have heretofore decided the disputed price issue adversely to Pan American; and that under such judicial decisions the correct rate for this sale is 8.4 cents and the Commission should so find and should not defer decision pending any further decision on this matter by the State courts.

We are of the view that it is neither necessary nor appropriate for the Commission to determine in this proceeding what is the price for the sale by Pan American to Cities Service, or to pass on the various issues related to this dispute. This case has been long pending and it is imperative that it be disposed of without further delay. The contract price of 8.4 cents per Mcf is justified under the requirements of public convenience and necessity. The price of 11 cents per Mcf provided for by the supplement to the contract is below the price permitted by our Statement of General Policy No. 61-1 issued September 28, 1960, and obviously is also justified under the standard of public convenience and necessity. The dispute between Pan American and Cities Service over the price for this sale is being litigated by the parties in the Kansas courts, and the matter may reasonably be left for disposition by the courts.

It is obviously desirable that this order include a provision that the Commission's action herein is without prejudice to whatever determinations may be reached by the courts or the Commission with respect to the dispute between Pan American and Cities Service concerning the price for this sale.

The Commission further finds:

(1) Pan American Petroleum Corporation, the applicant herein, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is therefore a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sale of natural gas by Pan American to Cities Service hereinbefore described, as more fully described in the application, as amended, is made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by applicant, together with the operation of any facilities therefor subject to the jurisdiction of the Commission, is subject to the requirements of subsections (c) and (e) of Section 7 of the Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sale of natural gas by Pan American, together with the operation of any facilities therefor subject to the jurisdiction of the Commission, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued authorizing Pan American to sell natural gas to Cities Service, and to continue to operate any facilities subject to the jurisdiction of the Commission used for such sale, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) This certificate is not transferable and shall be effective only so long as applicant continues the acts or operations hereby authorized in accordance with the provisions of the Act and applicable rules, regulations and orders of the Commission.

(C) The issuance of this certificate does not constitute a determination of what was or is the price for the sale by Pan American to Cities Service, and is without prejudice to whatever determinations may be reached on the dispute between Pan American and Cities Service concerning this matter, or the rights of the parties in regard to this matter.

(D) Pan American's appeal and motions filed herein on November 10, 1958, are granted to the extent hereinabove set forth, otherwise, they are denied. To the extent hereinabove indicated, the above described rulings of the examiner are reversed.

By the Commission.

/s/ J. H. Gutride
Joseph H. Gutride,
Secretary.

FILE COPY

Office Supreme Court, U.S.
FILED
MAR 20 1961
JAMES R. BROWNING, Clerk.

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 80

PAN AMERICAN PETROLEUM CORPORATION, a Delaware Corporation,
Petitioner,
v.
THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE sitting as a Judge of That Court, and CITIES SERVICE GAS COMPANY, a Delaware Corporation,
Respondents.

No. 81

TEXACO, INC., a Delaware Corporation,
Petitioner,
v.
THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE sitting as a Judge of That Court,
Respondents,
and
CITIES SERVICE GAS COMPANY, a Delaware Corporation,
Intervening Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

BRIEF FOR RESPONDENT CITIES SERVICE GAS COMPANY

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OKLAHOMA TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 5-8750

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In the

Supreme Court of the United States

OCTOBER TERM, 1960

No. 80

PAN AMERICAN PETROLEUM CORPORATION, a Delaware Corporation,
Petitioner,
v.
THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE sitting as a Judge of That Court, and CITIES SERVICE GAS COMPANY, a Delaware Corporation,
Respondents.

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TEXACO, INC., a Delaware Corporation,
Petitioner,
v.
THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE sitting as a Judge of That Court,
Respondents,
and
CITIES SERVICE GAS COMPANY, a Delaware Corporation,
Intervening Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

BRIEF FOR RESPONDENT CITIES SERVICE GAS COMPANY

OPINIONS BELOW

Certiorari was granted by this Court to review the judgment of the Supreme Court of Delaware denying its Writ of Prohibition to the Superior Court of New Castle County State of Delaware. The Writ was sought by Petitioners to prohibit such Superior Court from proceeding to hear and determine separate actions filed in such Court by the Respondent, Cities Service Gas Company, against

each of the Petitioners. The Opinion of the Supreme Court of Delaware is reported at 158 A.2d 478 (R. 33-46).

In the trial court Petitioners filed Motions for Summary Judgment. The Motion of Pan American has never been ruled upon. In overruling the Motion of Texaco, Inc., the Superior Court wrote an Opinion which is reported at 155 A.2d 878 (R. 8-21). The Order denying Texaco's Motion for Summary Judgment was an interlocutory order from which no appeal was afforded. This is not a review of that Order.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition for a Writ of *Certiorari*.

QUESTION PRESENTED

Does Section 22 of the Natural Gas Act oust a state court of its jurisdiction to entertain plaintiff's causes of action, admittedly based upon common-law theories, because the defendant alleges, as one of several defenses, a defense based upon the Natural Gas Act?

STATUTE INVOLVED

The provision of the Federal statute involved is Section 22 of the Natural Gas Act, 52 Stat. 833 (1938), 15 U.S.C. 717(u). The portion of such statute involved here reads as follows:

> "The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the

United States *shall have exclusive jurisdiction* of violations of this chapter or the rules, regulations, and orders thereunder, and *of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation or order thereunder.* * * *"[1]

STATEMENT OF THE CASE

Petitioners seek review of an opinion and final judgment of the Supreme Court of the State of Delaware denying their petition for a writ prohibiting Cities Service Gas Company (Cities), the Superior Court of the State of Delaware in and for New Castle County, and the Honorable Andrew D. Christie, sitting as a Judge of that Court, from proceeding further in Civil Actions 671 and 722 (R. 1-7, 33-48). In Civil Actions 671 and 722, Cities seeks money judgments for involuntary payments made in excess of the contract price to Petitioners for purchase of natural gas (R. 52-59, 232-237). Petitioners' request for a Writ of Prohibition was predicated entirely on the ground that "a state court has no jurisdiction of the subject matter of these civil actions" (R. 2). The Supreme Court of Delaware denied the Petition for a Writ of Prohibition on the ground that the subject matter of the complaints was founded on private contracts deriving their force from state law (R. 41).

Cities and the Petitioners are all Delaware corporations. Cities is a natural gas pipe line company subject to the jurisdiction of the Federal Power Commission. Petitioners are producers of natural gas who are also subject

[1] Unless otherwise indicated, emphasis is supplied throughout this brief.

to the jurisdiction of the Federal Power Commission. Cities purchases natural gas from Petitioners and others, and transports and sells such gas to local distributing companies for resale to the general public.

In 1949 and 1950, Cities entered into fixed price contracts with Petitioners to purchase natural gas produced by Petitioners from the Hugoton Field in Kansas. In each case, the price agreed upon was less than 11¢ per thousand cubic feet (Mcf) at a pressure base of 14.65 psia[2] (R. 68-109, 238-259).

On December 2, 1953, the Corporation Commission of the State of Kansas promulgated an order, effective January 1, 1954, fixing a minimum price of 11¢ per Mcf to be paid for natural gas produced from the Kansas-Hugoton Field (R. 261-268). The effect of this order was, of course, to require Cities to pay Petitioners higher prices than agreed upon in the respective contracts. Cities immediately instituted proceedings for judicial review of the order.

Prior to making any payments for gas purchased subsequent to the effective date of the Kansas minimum price order, Cities sent a letter, dated January 21, 1954, to Petitioners notifying them that Cities had filed suit for judicial review of the order; that future payments by Cities, pursuant to the Kansas order, would be made to avoid the penalties provided by the Kansas statutes for violation; and that such payments, pending final judicial determina-

[2] Per square inch absolute.

tion of the validity of the order, "are to be considered and accepted by you as involuntary payments on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said order" (R. 153-154, 609-610).[3] In the final paragraph of said letters, Cities stated (R. 154, 610):

> "In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayment."

Thereafter, each monthly voucher check sent to the Petitioners for gas purchased by Cities bore the legend that the payment was made subject to the provisions of the January 21, 1954 letter (R. 168, 614). Petitioners accepted all such checks, cashed them and made no objection to the conditions upon which they were tendered. Significantly, Texaco, by letter dated March 2, 1954, acknowledged receipt of Cities' payment of February 25, 1954, made no objections to the conditions of payment, but merely requested that part of the payments be sent to a different address in the future (R. 168-169). Pan American (formerly Stanolind) by letter to Cities dated January 27, 1954, stated (R. 611):

> "We construe the last paragraph of said [January 21, 1954] letter to mean that Cities will expect Stan-

[3] Texaco, Inc., was formerly The Texas Company. Pan American Petroleum Corporation was formerly Stanolind Oil and Gas Company. Columbian Fuel Corporation, formerly Petitioner in Case No. 82, was also a party to the proceeding below. It withdrew as a party to this appeal after a settlement of Cities' claims.

olind to refund to it the amount of overpayments, if any, without any interest thereon should the said Order of December 2, 1953, be finally judicially modified or declared to be invalid in whole or in part by an adjudication which would be binding and controlling on Stanolind. We will, therefore, accept payment on this basis."

It is also significant that after Cities sent its January 21, 1954 letter to Petitioners, Petitioners sent similar letters to their royalty owners and to owners of fractional interests in the Kansas-Hugoton Field notifying them that the Kansas order was being challenged; that they were receiving payments "* * * upon the condition * * * that in the event said order is held invalid, a refund be made to the purchaser of any amount so paid in excess of that payable in the absence of said order" (R. 588); that they would pay royalties and make payments to the owners of fractional interests pursuant to the Kansas order; but would expect refunds if the Kansas order was overturned (R. 200-203, 588-589). Thus, each Petitioner recognized that payment of the 11¢ price was made conditionally and subject to refund.

The impact of the Kansas minimum price order upon Cities together with other increased costs was such that on March 22, 1954, Cities was compelled to file increased rates with the Federal Power Commission in Docket No. G-2410. During such rate proceeding, the Commission was advised that Cities was paying 11¢ per Mcf to producers, such as Petitioners, as a result of the Kansas order and subject to the conditions set forth in its letter of January 21, 1954. On May 25, 1956, the Commission entered its order approving a settlement of that case (R. 556-586).

The settlement order provided that Cities is required to refund to its jurisdictional customers, in accordance with the formula set forth in the order, the major portion of the money obtained by Cities as a result of the very litigation involved herein (R. 566-567, 571-573).

Cities' suit challenging the validity of the Kansas minimum price order reached this Court in 1957. On January 20, 1958, this Court held that the Kansas order was void. *Cities Service Gas Company* v. *State Corporation Commission*, 355 U.S. 391. Thereafter, the Supreme Court of Kansas held that the Kansas order was void *ab initio* for lack of jurisdiction in the Kansas Corporation Commission to issue the order. *Cities Service Gas Company* v. *Kansas Corporation Commission*, 184 Kan. 540, 337 P.2d 640 (1959), *cert. den.* 361 U.S. 836 (1959).

Following the January 20, 1958, decision of this Court, Cities resumed payments for gas purchased from Petitioners at the contract prices instead of the State-ordered minimum price, and made demand upon Petitioners for repayment of the difference between the contract prices and the amounts actually paid for gas at the 11¢ price fixed in the void Kansas minimum price order. Petitioners refused to make refunds and Cities brought the actions below to recover such differences (R. 52-59, 232-237).

Briefly stated, Cities' complaints set forth common-law actions based upon express and implied contracts to refund overpayments or for restitution (R. 52-59, 232-237). Petitioners have repeatedly admitted that Cities' complaints are grounded solely on common-law bases.[1] At no place in

[1] R. 170, 219, 230, 616, 656; Pan American's Petition for a Writ of Certiorari, pp. 3, 6; Texaco's Petition for a Writ of Certiorari, p. 2.

Cities' complaints is any reference made to, or reliance placed upon, the Natural Gas Act or any orders, rules or regulations issued thereunder or any action taken pursuant thereto. Petitioners, however, raised *defenses* relating to the Act in their answers (R. 59-68, 620-635). The facts underlying these defenses are as follows:

While Cities was challenging the validity of the Kansas minimum price order, this Court issued its decision in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954), holding that sales of natural gas by producers for resale in interstate commerce were subject to the jurisdiction of the Federal Power Commission, within the meaning of the Natural Gas Act. As a result of such decision, the Federal Power Commission on July 16, 1954, issued its Order 174 directing producers, such as Petitioners, making sales for resale in interstate commerce to file their contracts for such sales as their rate schedules.[5] "Rate Schedule" was defined as "* * * the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954 * * *" (18 C.F.R. 154.93). The order did not require the filing of any "schedule of rates" as claimed by Petitioners.[6] It merely ordered the filing of the above enumerated documents, which documents constituted the "rate schedule." In *Sun Oil Co.* v. *F.P.C.*, 364 U.S. 170, 172 (1960), this Court described such rate schedules as being "contract-rate-schedules."

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[5] Order 174 was later supplemented or replaced by Orders 174-A and 174-B.

[6] See Pan American Brief, p. 3, as compared with Texaco Brief, p. 6.

Purporting to comply with the Commission's Order 174, Petitioners submitted various documents to the Commission as their initial contract-rate-schedules. On September 26, 1954, Petitioner Texaco tendered "as its rate schedule" the basic contract between Cities and Texaco and a letter agreement amending the contract to cover additional acreage (R. 126-128). It also submitted sample billing statements indicating a price per Mcf of 11¢ *with the notation that such price was in accordance with the Kansas minimum price order* (R. 126-138), but did not file a copy of the Kansas order.[7] Texaco made no mention of Cities' letter of January 21, 1954, nor did it tender such letter as part of its rate schedule. At a later date, the Commission sent a letter to Texaco requesting it to submit the Kansas order and "any agreement by the buyer to pay the related rate on a contingent or conditional basis * * * *" (R. 149-150). Pursuant to such request, Texaco submitted the Kansas order and Cities' letter of January 21, 1954, which Texaco described as " * * * setting forth the contingent or conditional basis upon which the minimum rate will be paid" (R. 152-153).

On November 15, 1954, Pan American transmitted as its rate schedule, the basic contract between Pan American and Cities, 76 letters and agreements as amendments and supplements to the basic contract, a sample billing statement and the Kansas minimum price order (R. 591-599). In its covering letter Pan American stated that the initial rates were "set forth in the gas sales contract"

[7] The billing statement is not a part of the rate schedule as defined by the Commission Regulations, but is required to be attached thereto by a separate regulation [See 18 C.F.R. 154.93 and 18 C.F.R. 154.92(a)].

appended to the letter of transmittal (R. 591-592). With regard to the Kansas order, Pan American stated that such order had been declared valid by a court of competent jurisdiction and "said gas sales contract is, therefore, subject to said order and has been, in effect, amended thereby" (R. 597-598).

Thereafter, the Secretary of the Commission, pursuant to an unpublished minute of the Commission directing such action, wrote a form letter to Petitioners advising them that their tendered documents had been accepted for filing as rate schedules (R. 138-143, 601-607). The Commission's letters made no mention of an 11¢ rate, but simply listed the documents which had been tendered and accepted for filing (R. 138-143, 601-607).

Cities was not notified of the entry of the minute. Nor was it served with copies of the Secretary's letters to Petitioners.[8]

The 174 series of orders contained no provision requiring producers, such as Petitioners, to serve purchasers, such as Cities, with copies of the documents tendered pursuant to the orders. Nor did Order 174 make any provision for notification by the Commission to the purchasers of the filing or acceptance of the producer rate schedules. The

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[8] When Petitioners filed their contract-rate-schedules with the Commission, they simultaneously filed applications for certificates of public convenience and necessity to continue the service being rendered to Cities. On December 5, 1955, the Commission issued a certificate to Texaco authorizing it to continue to render the service set forth in the contracts (R. 179-190). As will be discussed in greater detail hereinafter, on December 1, 1960, the Commission issued a certificate to Pan American to render the service set forth in the contracts and stated that the dispute as to the price may reasonably be left for disposition by the courts (Appendix A, hereto).

rate filings pursuant to Order 174 were not docketed by the Commission, no provision for any hearing was contained in the order and none was held (18 C.F.R. 154.92, *et seq.*).

Based on its view of the above described rate schedule filing, Texaco, on January 30, 1959, filed a motion for summary judgment with the Superior Court of Delaware, wherein it contended that (R. 170-171): (1) From January 1, 1954, to July 16, 1954 (date of issuance of FPC Order 174) the only lawful price was that set forth in the Kansas order; (2) after July 16, 1954, the only lawful price was that on file with the FPC, "* * * *and plaintiff does not base its claim upon that filed rate*"; or (3) if the Kansas order was ineffective during the period from January 1, 1954, to July 16, 1954, or if defendant had no rate on file with the FPC, the only lawful price would have been that prescribed by the Natural Gas Act (15 U.S.C., §717, *et seq.*), "* * * *and plaintiff does not base its claim upon that Act.*"[9]

In answer to Texaco's brief in support of its motion, Cities pointed out that the Kansas order was void *ab initio;* that the rate schedule which Texaco filed with the Commission in compliance with Order 174 was the contract in effect as of June 7, 1954, and that, therefore, Cities' claim for recovery was not inconsistent with or barred by the contract-rate-schedule filed by Texaco (R. 773-779). In its reply brief, Texaco for the first time raised the contention that Section 22 of the Natural Gas Act precluded the

[9] Pan American also filed a Motion for Summary Judgment on identical grounds, but its motion has not yet been disposed of by the Superior Court (R. 656). Additionally, Cities has filed a Motion for Summary Judgment, which has not been disposed of by the Superior Court.

Delaware state courts from entertaining Cities' causes of action because that section conferred exclusive jurisdiction of Cities' causes of action in the Federal District Courts (R. 4, 11-12).[10]

Since the issues before the Superior Court of Delaware included the jurisdictional question raised in Texaco's reply brief, as well as the merits of its Motion for Summary Judgment, the Court disposed of all such issues (R. 8-21). While we thoroughly disagree with the version of the decision of the Superior Court set forth in Petitioners' brief, the decision speaks for itself and we do not deem it necessary to restate that decision. Moreover, that decision is not subject to review here, since it was an interlocutory order from which no appeal could be taken. Suffice it to say, however, that the Superior Court held Texaco's contention that it lacked jurisdiction "to be without merit." It agreed with Cities that "The Actions here asserted are based on contracts and/or restitution and not on the Natural Gas Act * * *" (R. 13). It also found that there was no inconsistency between Cities' claim for recovery and the rate schedule filed with the Commission by Texaco and for these reasons denied Texaco's Motion for Summary Judgment (R. 14-21).

Thereafter Petitioner Texaco, joined by Petitioner Pan American, instituted an original action by petitioning the Supreme Court of Delaware for a writ prohibiting any further proceedings in Civil Actions 671 and 722 (R. 1-7). The sole ground for such petition was that "a state court has no jurisdiction of the subject matter of these civil

[10] Because Texaco made this jurisdictional attack as an afterthought in its reply brief, the Superior Court permitted Cities to file a supplemental memorandum as to the jurisdictional question.

actions" (R. 2). Relying solely on Section 22 of the Natural Gas Act, Petitioners averred that exclusive jurisdiction was vested in the federal courts (R. 5-6). The Petition for a Writ of Prohibition was denied by a unanimous Court (R. 33-48).[11] The decision of the Delaware Supreme Court denying prohibition is now before this Court on *Certiorari*.

SUMMARY OF ARGUMENT

Although more than seven years have elapsed since the Kansas order was issued in 1954, and more than three years have now passed since this Court's invalidation of that order in January, 1958, the controversy has not as yet passed the threshold question as to the proper forum for adjudicating Cities' claims. In their petition for a Writ of Prohibition, Petitioners contended that the state court lacked jurisdiction of the subject matter of Cities' complaints: Relying on Section 22 of the Natural Gas Act, Petitioners contended that the Federal District Courts have exclusive jurisdiction to entertain Cities' causes of action.

Petitioners conceded below that the jurisdictional question was the sole issue involved in their Petition for a Writ of Prohibition. In the court below Petitioners took the

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[11] Petitioners' version of the Supreme Court of Delaware decision also leaves much to be desired, but, again, we believe the decision speaks for itself.

position that a determination of what is the filed rate was unnecessary to a resolution of the jurisdictional question.[12] Reversing their position here, Petitioners assert that the filed rate is what they say it is and that Cities is seeking to collaterally attack that rate. It is obvious that this latter point is not in issue since this question goes to the merits of Petitioners' defense, rather than the jurisdiction of the state court to entertain the causes of action.

Part I of this Argument is devoted to straightening out Petitioners' confusion of arguments as to the merits with arguments on the matter of jurisdiction. In presenting arguments which go to the merits of Petitioners' "filed rate defenses" or to the judgment which should be rendered by the trial court, Petitioners have confused the question of jurisdiction with the wholly unrelated question as to the judgment which should be rendered in the trial upon the merits. *Montana-Dakota Util. Co.* v. *Northwestern P.S.C.*, 341 U.S. 246, 249 (1951). Jurisdiction of the trial court does not turn upon the result which should be reached in a case, but is simply the power to hear the case and decide it one way or the other.

In Part II of this Argument we demonstrate that jurisdiction of the federal courts vested by Section 22 of the

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[12] Petitioners stated in their main brief in support of the Writ of Prohibition (R. 30):

> "We submit that the sole question that is before this Court and was before the Superior Court on defendants' motions is this:
>
> "Assuming defendants' filed rates are as the plaintiff claims, identical with what it claims are the contract prices, do the courts of this state, or any state, have jurisdiction to entertain a claim based upon the contract prices?
>
> "This question very obviously does not reach the dispute between plaintiff and the defendants of whether the filed rates are what the plaintiff claims or what the defendants claim."

Natural Gas Act is limited to those cases which are *brought* to enforce a liability created by the Natural Gas Act, or regulations of the Federal Power Commission. Section 22 has no application to cases in which the defendant relies upon defenses based upon the Natural Gas Act or upon alleged acts or orders of the Federal Power Commission.

The plaintiff is the master of its lawsuit. It may choose the legal theory upon which it will rely. Where, as here, plaintiff pleads common-law theories as its cause of action, a state court has jurisdiction over the litigation. Once state court jurisdiction attaches, it continues, notwithstanding defendant's injection of federal defenses.

The Congress and this Court have historically regarded state courts as perfectly adequate tribunals for the decision of federal questions injected into cases as a matter of defense. However, Petitioners urge that this Court depart from its traditional construction of federal jurisdictional statutes, similar to Section 22, by the determination of jurisdiction from matters alleged in both the complaint and the answer. Although this is contrary to all announced tests of jurisdiction, they argue that federal court jurisdiction would promote uniformity of decision (Pan American Brief, pp. 47-57; Texaco Brief, pp. 25-29). This Court has long ago rejected this argument. Uniformity of decision is assured by the right of review in this Court.

Petitioners' assertion that Cities cannot rely on common-law rights is at war with this Court's decision in *United Gas Pipe Line Co.* v. *Mobile Gas Corp.*, 350 U.S. 332 (1956), which held that the Natural Gas Act did not abrogate private contract rights. If, as stated in *Mobile*,

the Act preserved the integrity of contracts, then it necessarily follows that the Act does not preclude state court jurisdiction to vindicate contract rights.

In Part III we show that Petitioners' filed rate defenses fly in the teeth of *Natural Gas Pipeline Company of America* v. *Federal Power Commission*, 253 F.2d 3 (3rd Cir., 1958)[13] and *Cities Service Gas Company* v. *Federal Power Commission*, 255 F.2d 860 (10th Cir., 1958)[14] Those decisions hold that since the minimum price orders were void *ab initio*, the legally effective rate accepted by the Commission was the rate fixed in the valid and binding contract between the parties as of June 7, 1954. Petitioners seek to avoid the holdings in these cases, which they admit would be otherwise controlling, by accusing Cities of having failed to exhaust administrative remedies.

The record shows, however, that there was no reason for Cities to protest or to exhaust administrative remedies because: (1) Order 174 required Petitioners to file their contracts effective and applicable as of June 7, 1954; (2) the rate schedules tendered by Petitioners reflected the conditional basis upon which Cities agreed to pay the Kansas ordered price as of June 7, 1954; (3) in tendering their rate schedules Petitioners never claimed that they had an unconditional right to an 11¢ price; (4) in accepting the documents tendered by Petitioners, the Commission was careful not to disturb substantive rights.

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[13] *Cert. denied, sub nom., Dorchester Corporation* v. *Natural Gas Pipeline Co.*, 357 U.S. 927 (1958).

[14] *Cert. denied, sub nom., Magnolia Petroleum Co.* v. *Federal Power Commission*, 358 U.S. 837 (1958).

Since the record shows that the Commission carefully preserved Cities' contract rights in accepting the rate schedules for filing, the cases cited above are controlling and cannot be distinguished. Hence, under the holdings in those cases, the contract rate is the rate which was in effect as of June 7, 1954.

Petitioners cannot point to a single order of the Commission with respect to their rate schedule filings determining rights adversely to Cities which would have necessitated the exhaustion of administrative remedies. The tabulation on which Petitioners rely, shows that the 11¢ price was being paid in accordance with the Kansas order and the minutes show that the Commission accepted the basic contract which made payments of the Kansas ordered price conditional on its validity. Moreover, the far-fetched assertion by the Petitioners that a tabulation attached to the minutes of a private meeting by the Commission show that the Commission accepted an unconditional rate of 11¢ is rebutted by the fact that the Commission would not determine rights adversely to Cities without providing for notice or a hearing and without making necessary findings.

The fact that the Commission made no substantive determination of rights is evidenced by the fact that its Order 174 made no provision for notice or hearing as to producer's rate schedule filings or the acceptance thereof.

That Cities is not seeking to collaterally attack a filed rate, and that there is no issue here involved within the primary jurisdiction of the Commission is evidenced by the Commission's order issuing a certificate to Pan American wherein it held that the price issue may be reasonably left for disposition in the state courts (Appendix A, hereto).

The Delaware Court merely held that a state court has jurisdiction to interpret a rate schedule in order to resolve a federal question injected defensively. Since there is no assertion here that the rate on file with the Federal Power Commission is unreasonable, the decisions in *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1956) and other related cases, relied on by Petitioners for their collateral attack argument, are inapposite.

The assertion that the Commission has modified Cities' rights to refunds is at war with the Commission's order requiring Cities to make refunds to its jurisdictional customers if successful in this and similar litigation.

The thrust of Petitioners' contentions is that they may retain the full benefits of the Kansas order in the teeth of its invalidation by this Court, thereby rendering for nought: Cities' persistence in pressing for such invalidation; Cities' letter of January 21, 1954, reserving its rights to refunds; Petitioners' agreement to make such refunds; and indeed, the very fact of invalidation itself. Acceptance of Petitioners' arguments would not only mean that Cities and its customers would be denied refunds for payments under the Kansas order for the seven years which have already elapsed since such order purported to become effective in January, 1954; but Petitioners, and producers similarly situated, would continue to receive payments pursuant to the invalid Kansas order for an indefinite period in the future. Petitioners' contention that it is the Natural Gas Act which preserves their right to receive the invalidated Kansas price makes a mockery of the Act's

purpose to protect consumers and flies in the teeth of this Court's decision holding the Kansas order void, because it conflicted with the provisions of the Natural Gas Act.

I.

THE SINGLE QUESTION TO BE DECIDED BY THIS COURT IS WHETHER OR NOT THE SUPERIOR COURT OF NEW CASTLE COUNTY, DELAWARE, HAS JURISDICTION TO HEAR AND DETERMINE THE CASES NOW PENDING BEFORE IT.

The fundamental error of Petitioners' position lies in their confusion of the question of jurisdiction of a trial court with the question as to what judgment the trial court should enter.

The source of this confusion is explained in *Montana-Dakota Util. Co.* v. *Northwestern P.S.C.*, 341 U.S. 246 (1951). In that case the Court of Appeals had held that the trial court lacked jurisdiction because the complaint collaterally attacked a filed rate.[15] In reversing the Court of Appeals' ruling, this Court held:

> "As frequently happens where jurisdiction depends on subject matter, the question whether jurisdiction exists has been confused with the question whether the complaint states a cause of action. * * * To determine whether that claim is well founded, the District Court must take jurisdiction, whether its ultimate resolution is to be in the affirmative or the negative. If the complaint raises a federal question, the mere claim confers power to decide that it has no

[15] Bear in mind that the complaints here made no mention of Petitioners' filed rate, much less, attacked them.

merit, as well as to decide that it has" (341 U.S. at 249).

It is vitally important to a proper consideration of this case to constantly bear in mind that *Certiorari* was granted to review an order of the Supreme Court of Delaware rendered in an original action which denied Petitioners' Application for a Writ of Prohibition. The single question presented to and decided by the Delaware Court was whether or not the trial court had jurisdiction, not to render a particular judgment, but to entertain the cases before it.

In the Delaware Supreme Court Petitioners emphasized that the merits of their "filed rate" defenses were not before the court. Thus, they stated:

> "This question (as to the trial court's jurisdiction) very obviously does not reach the dispute between plaintiff and the defendants of whether the filed rates are what the plaintiff claims or what the defendants claim." (R. 30).

Because of the limited nature of the proceeding, the Supreme Court of Delaware decided this single question:

> "* * * The substantial question which emerges, in one form or another, is whether the state courts have jurisdiction to entertain the suits on the refund contracts."
>
> "For the reasons above stated, we are of the opinion that such jurisdiction exists." (R. 46).

The carefully limited decision of the Delaware Supreme Court conformed to the general rule, consistently followed in Delaware, that the remedy of prohibition tests

the single issue as to whether or not the inferior court has jurisdiction to hear and determine the case. The Writ of Prohibition may not be distorted into a substitute for ordinary appellate process or for Writ of Error. *Clendaniel v. Conrad*, 26 Del. 549, 83 Atl. 1036, 1052 (1912); *Knight v. Haley*, 36 Del. 361, 176 Atl. 461, 465 (1934); *Canady v. Superior Court*, 49 Del. 332, 116 A.2d 678, 681-682 (1955).

This Court has consistently confined its consideration to those questions which were *both* essential to the decision of the court below and were passed upon by the court below. *McCullough v. Kammerer Corp.*, 323 U.S. 327 (1945); *Needelman v. United States*, 362 U.S. 600 (1960).

II.

SECTION 22 OF THE NATURAL GAS ACT HAS NO APPLICATION SINCE THE SUITS HERE INVOLVED WERE NOT BROUGHT TO ENFORCE A LIABILITY OR DUTY CREATED BY THE NATURAL GAS ACT.

Petitioners' contention[19] that the Delaware courts lack jurisdiction to entertain the causes of action here involved is predicated on Section 22 of the Natural Gas Act. That section provides, in pertinent part, that federal courts shall have:

> "* * * exclusive jurisdiction of violations of this chapter or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law, *brought to enforce any liability or duty created by*, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder * * *" (15 U.S.C.A., §717u).

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[19] Texaco Brief, pp. 25-29; Pan American Brief, pp. 47-57.

Petitioners are met at the outset by the very plain fact that Section 22 of the Act limits the exclusive jurisdiction of the federal courts to those suits in equity and actions at law, *brought* to *enforce* any liability or duty *created by* the Natural Gas Act or any rule, regulation, or order thereunder. The crucial question to be determined, therefore, is whether the suits here involved were *brought* to enforce a liability or duty *created* by the Act, or whether those suits arise from, and were brought to enforce, liabilities or duties arising under or created by the common law. As shown below, the causes of action here involved were brought to enforce liabilities or duties created by the common law, and were, therefore, properly brought in the Delaware state courts.

A. Jurisdiction of the Trial Court Is Determined From Plaintiff's Statement of His Claim.

This Court, on many occasions, has examined the question of state court versus federal court jurisdiction, particularly in connection with the provisions of 28 U.S.C. 1331 and 1338. These sections define the jurisdiction of the United States District Courts over cases which arise under the constitution, laws or treaties of the United States, 28 U.S.C. 1331; and over cases arising under acts of Congress relating to patents, copyrights and trade-marks, 28 U.S.C. 1338. The consistent interpretation which this Court has given to these provisions (parallel to the provisions of

Section 22) is compelling authority against the contrary construction urged by defendants.[17]

Without exception, this Court has held that the single test of jurisdiction under both Sections 1331 and 1338 is the statement of the plaintiff's claim in his complaint unaided by any defense which the defendant may have pleaded, or which plaintiff anticipates the defendant may plead.

Thus, this Court has recognized that the plaintiff is the master of his lawsuit, *The Fair* v. *Kohler Die & S. Co.*, 228 U.S. 22, 25 (1913); *Odell* v. *Farnsworth Co.*, 250 U.S. 501, 503 (1919); that the single test of jurisdiction is the allegations of the complaint; *Henry* v. *A. B. Dick Co.*, 224 U.S. 1, 16 (1912); that from the allegations of plaintiff's complaint the Court must determine the question of jurisdiction; *Taylor* v. *Anderson*, 234 U.S. 74, 75 (1914) and *First National Bank* v. *Williams*, 252 U.S. 504, 512 (1920); and that if the plaintiff's complaint states a common-law cause of action, jurisdiction is fixed in the state court even if plaintiff might have chosen to state a federally created cause of action, *Henry* v. *A. B. Dick Co.*, *supra*. See also *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667, 672 (1950) and cases cited.

This traditional construction of 28 U.S.C. 1331 and 1338 should be applied to Section 22 of the Act because of

[17] Sections 1331 and 1338(a) of Title 28 deal with jurisdiction of civil actions "arising under" federal law. Although Section 22 of the Natural Gas Act speaks of suits brought to enforce duties and liabilities created by the Act, the legislative history indicates that Congress intended to create the traditional type of federal jurisdiction for cases "arising under" the Act. *See* H. Rept. No. 709, 75 Cong., 1st Sess.; S. Rept. No. 1162, 75th Cong., 1st Sess., p. 7 (1937).

this Court's "deeply felt and traditional reluctance to expand the jurisdiction of the federal courts through a broad reading of jurisdictional statutes." *Romero* v. *International Term. Operat. Co.*, 358 U.S. 354 (1959). The mountainous burden of federal court litigation, which would inevitably follow a determination that jurisdiction under Section 22 is to be determined from the allegations of the answer, is a significant consideration.

B. Cities' Complaints State Only Common-Law Causes of Action.

Examination of Cities' complaints in these proceedings (R. 52-59, 159-160, 232-237, 619-620) makes it clear beyond any doubt that the complaints are predicated wholly and solely on common-law theories of contract, restitution and unjust enrichment—causes of action over which state courts have traditionally exercised jurisdiction.[18] The Natural Gas Act is not even mentioned in Cities' complaints. Nor does Cities rely upon the Natural Gas Act for its recovery.

Indeed, Petitioners (defendants below) have repeatedly admitted that Cities' complaints state only common-law causes of action. (See: Pan American's petition for Writ of *Certiorari*, pages 3 and 6; Pan American's brief in the trial court (R. 616); Texaco's petition for Writ of *Certiorari*, pages 2, 5 and 6; Texaco's brief in the trial court

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[18] The right to recover what has been lost under an invalid statute or judgment subsequently reversed is "• • • well founded in equity [and] has been recognized in the practice of the courts of common law from an early period." *Arkadelphia Milling Co.* v. *St. Louis Southwestern R. Co.*, 249 U.S. 134, 145 (1919). *See also Bank of United States* v. *Bank of Washington*, 6 Pet. 8, 17 (1832); *Erwin* v. *Lowry*, 7 How. 172, 184 (1849); *Northern Fuel Co.* v. *Brock*, 139 U.S. 216, 219 (1891).

(R. 220-230). Moreover, at the close of all the pleadings filed by Cities and Petitioners in the Superior Court of Delaware, each Petitioner filed a Motion for Summary Judgment in which the unequivocal statements are made that:

> "* * * plaintiff does not base its claim upon that [defendants'] filed rate;" (R. 170, 656).
>
> and
>
> "* * * plaintiff does not base its claim upon that [Natural Gas] Act" (R. 170, 656).

Not one word has been added or subtracted from Cities' complaints since the filing of those Motions. Surely, then, if Cities' complaints stated common-law causes of actions at the time the Motions were filed, they state such causes of actions now. In view of Petitioners' repeated admission that the complaints state only common-law causes of action and the fact that the trial court and the Delaware Supreme Court so held, we will not detail the allegations of the complaints.

C. State Courts Are Not Ousted From Jurisdiction When Federal Questions Are Injected Defensively.

From the pleadings, it is apparent that petitioners themselves raised the federal question by way of defending that the recovery sued for was barred by rate schedules filed with the Federal Power Commission pursuant to Order 174 (R. 67, 623-634). Assertion of such defense, however, does not oust state courts of their jurisdiction.

This Court has consistently held that state courts are not ousted of jurisdiction merely because federal questions are injected defensively. *Skelly Oil Co.* v. *Phillips Petro-*

leum Co., 339 U.S. 667 (1950); *Gully* v. *First National Bank*, 299 U.S. 109 (1936); *Louisville & Nashville R. Co.* v. *Mottley*, 211 U.S. 149 (1908); *Pratt* v. *Paris Gaslight & Coke Co.*, 168 U.S. 255 (1897).

In the landmark case, *Pratt* v. *Paris Gaslight and Coke Co., supra*, this Court upheld state court jurisdiction of a contract suit, even though invalidity of a patent was claimed in connection with a defense. The Court said (168 U.S. at 259):

> "The state court had jurisdiction both of the parties and the subject matter as set forth in the declaration and it could not be ousted of such jurisdiction by the fact that incidentally to one of these defenses the defendant claimed the invalidity of a certain patent"

Two federal court decisions which have reviewed substantially identical complaints have found that the claim was founded, *not* upon federal law, but upon contracts deriving their force from state law. *Cities Service Gas Co.* v. *Skelly Oil Co.*, 165 F. Supp. 31 (D. Del. 1958); *Northern Natural Gas Co.* v. *Cities Service Oil Co.*, 182 F. Supp. 155 (D. Iowa, 1959); see also *Pan American Petroleum Corp.* v. *Cities Service Gas Co.*, 182 F. Supp. 439 (D. Kans., 1958).

In the *Pan American* case, *supra*, the Court dealt with the identical contracts involved in case No. 80. Petitioner in case No. 80 filed a Motion with the Federal District Court to remand its action for a declaratory judgment,

originally filed in the state courts of Kansas.[19] In ordering a remand, the Court held that "the right upon which the cause of action is founded is not federal in nature * * *." 182 F. Supp. at 446. It said (182 F. Supp. at 445):

> "The Natural Gas Act imposes certain duties upon the plaintiff as an independent producer. It must file its rate schedules with the Federal Power Commission and conform with its procedures. But the source of the right of action of the plaintiff is the contract; or, in the alternative, the conduct of the defendant in modifying the contract which conduct estops it from asserting its rights under the original agreement."[20]

These removal proceedings are persuasive, we submit, in this review of the Delaware Court's denial of a writ to prohibit the lower court from proceeding to trial.

D. State Court Jurisdiction Over Common-Law Rights Is Not Defeated Even Though a Cause of Action Might Have Been Brought for Violation of a Federal Statutory Right.

It is well established that state courts retain jurisdiction to vindicate common-law rights even where, as here, plaintiff could have declared upon other facets and facts of the same transaction which would constitute a

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[19] The obvious inconsistency between the positions of Petitioner Pan American here and in the District Court for the District of Kansas suggests that Petitioners' jurisdictional contentions before this Court may reflect a reluctance to reach a trial upon the merits, rather than a search for the proper forum.

[20] In that case, Pan American contends that Cities, by its conduct, modified the original contract.

violation of a federal statute.[21] State court jurisdiction over such claims is preserved even under a statute—like the Natural Gas Act—which provides for exclusive federal jurisdiction over civil actions *arising under* the Act. *Condon* v. *Associated Hospital Service*, 287 N.Y. 411, 40 N.E.2d 230 (1942) (copyright act); *Underhill* v. *Schenk*, 238 N.Y. 7, 143 N.E. 773 (1924) (copyright act); *Bert Lane Company* v. *International Industries*, 84 So.2d 5 (Fla. 1955) (patent act); *Respro, Inc.* v. *Worcester Backing Co.*, 291 Mass. 467, 197 N.E. 198 (1935) (patent act).[22]

This Court specifically stated in *Henry* v. *A. B. Dick Co.*, 224 U.S. at 17, that:

> "Although the complainant might have sued upon the broken contract, or brought a bill to declare a forfeiture of the licensee's rights for breach of the implied covenant to operate it only in connection with materials supplied by it, it has elected to sue for infringement. To quote from Judge Shipman's opinion

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[21] Petitioner Texaco insists that "the duty to repay (overcharges) arises from the Act, despite seemingly parallel common law causes of action." Texaco Brief, p. 25. See Pan American Brief, p. 50 and fn. 22. Petitioners rely on *United Gas Pipe Line Co.* v. *Willmut Gas & Oil Co.*, 231 Miss. 700, 97 So.2d 530 (1957), *cert. denied*, 357 U.S. 937 (1958). In that decision, however, state cour jurisdiction over an action alleging *discriminatory* rates was denied *not* because of exclusive federal jurisdiction under Section 22, but because of the primary jurisdiction of the FPC under the doctrine of *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951).

[22] Although 28 U.S.C.A. §1338(a) gives federal courts exclusive jurisdiction of "plain suits for [patent] infringement" (Annotation, 167 A.L.R. 1114, 1116), state courts retain jurisdiction of "suit[s] for damages for breach of a contract not to infringe * * *." (Id. at 1129). See *Henry* v. *A. B. Dick Co.*, 224 U.S. 1 (1912) (dictum). Cf. *Caraway* v. *Ford Motor Company*, 148 F. Supp. 776 (W.D. Mo. 1957) (antitrust laws); *Hand* v. *Kansas City So. Ry.*, 55 F.2d 712 (S.D. N.Y. 1931) (antitrust laws); *Guiterman* v. *Pennsylvania R.R.* 48 F.2d 851 (E.D. N.Y. 1931) (antitrust laws).

in Magic Ruffle Co. v. Elm City Co. supra: 'It was competent for the complainants to take either one of the two remedies . . . . . They could bring a bill alleging an injury to their exclusive rights under the laws of the United States, or, as the residence of the parties gave this court jurisdiction, could bring a proper suit setting up the breach of the contract as the gravamen of their action'."

This survival of state court jurisdiction is persuasively explained by Mr. Justice Cardozo in *Underhill* v. *Schenk*, 238 N.Y. 7, 143 N.E. 773 (1924). Similar results were reached in *Condon* v. *Associated Hospital Service*, *supra*; and in *Bert Lane Company* v. *International Industries*, *supra*. In the latter case the Supreme Court of Florida rejected the contention that federal courts had exclusive jurisdiction of a suit for unfair competition by unauthorized manufacture of a patented device. Noting that it was unnecessary to decide whether plaintiffs could have sued for patent infringement, the court stated (84 So.2d at 7):

> "* * * The patentee may elect to waive the right to sue in a federal court for infringement of his patent and may, instead, proceed in a state court to enforce some right protected by and enforceable under general common law and equitable principles applicable in such state. *Henry* v. *A. B. Dick Co.*, 1912, 224 U.S. 1, 32 S. Ct. 364, 367, 56 L.Ed. 645, and cases there cited."

E. The Natural Gas Act Did Not Abrogate Private Contractual Rights.

It is now firmly established that the Natural Gas Act in no way abrogated or set aside contracts or contract rights existing under gas purchase and sale contracts. *United Gas*

Pipe Line v. *Mobile Gas Corp.*, 350 U.S. 332 (1956), *affirming* 215 F.2d 883 (3rd Cir., 1954). See *Colorado Interstate Gas Co.* v. *F.P.C.*, 142 F.2d 943, 954 (10th Cir., 1944), *affirmed* 324 U.S. 581. *Cf. F.P.C.* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1955), *affirming* 223 F.2d 605 (D.C. Cir., 1955) (Federal Power Act).

In the *Sierra* case, *supra*, the Court of Appeals was concerned with "whether and to what extent the pre-existing right of utilities to enter into enforceable rate contracts has been abrogated by the Commission's power under the Act to regulate rates." After noting that "Congress did not expressly abrogate that right," the Court held that the common-law right to buy and sell electric energy at a contract rate was not abrogated, without a finding by the Commission that such a rate was unreasonable under the Federal Power Act.

A similar result was reached under the Natural Gas Act in the *Mobile* case, *supra*. In that case Mobile had a contract with United Gas Pipeline Company for the supply by the latter of the former's requirements for natural gas. The contract specified the rate to be paid, and was filed with the Federal Power Commission as a rate schedule. Subsequently, United, by its unilateral actions, filed an increased rate with the Federal Power Commission. The Court of Appeals held that, under the Natural Gas Act, a natural gas company cannot wipe out a rate contract simply by filing an increased rate schedule. In reaching this conclusion, the Court noted that a contrary conclusion "would result in further impairment of Petitioner's common law rights."

Both the *Mobile* and *Sierra* cases were unanimously affirmed by this Court. Writing for the Court in the *Mobile* case, Mr. Justice Harlan stated (350 U.S. at 338-339):

> "In construing the [Natural Gas] Act, we should bear in mind that it *evinces no purpose to abrogate private rate contracts as such.* To the contrary, by requiring contracts to be filed with the Commission, the Act expressly recognizes that *rates to particular customers may be set by individual contracts.* * * * only a relatively few wholesale transactions are regulated by the Natural Gas Act and these typically require substantial investment in capacity and facilities for the service of a particular distributor. Recognizing the need these circumstances create for individualized arrangements between natural gas companies and distributors, the Natural Gas Act *permits the relations between the parties to be established initially by contract*, the protection of the public interest being afforded by supervision of the individual contracts, which to that end must be filed with the Commission and made public."
>
> "* * * *The initial rate-making and rate-changing powers of natural gas companies remain undefined and unaffected by the Act.*" (350 U.S. at 343).

It necessarily and unavoidably follows from the *Mobile* and other decisions referred to above that if the Act preserves the "integrity of contracts" such as those here involved, and if the right to enter into such contracts remains "unaffected" by the Act, the right to bring common-law actions stemming from such contracts likewise re-

mains "unaffected" by the Act.[23] It is patently inconsistent, we respectfully submit, to say that the Natural Gas Act did not abrogate private rate contracts and that natural gas companies are free, as before, to set rates initially by such contracts, and then in the same breath to say that rights and obligations are not created by such contracts, but are, instead, created by the Act which did not abrogate such contracts. In short, the Natural Gas Act could not "create" something which already existed.

As has been shown above, the rights upon which the instant suits are predicated are rights which clearly arise out of common law. Those rights existed prior to the Natural Gas Act and persist to this day, subject only to the power of the Commission to alter such rights in accordance with the Natural Gas Act. *Mobile* case, *supra*. We submit, therefore, that the true test as to whether the instant actions can be maintained is whether the right to maintain the action would have existed without reference to the Act. Stated differently, it was not the filing of the contracts with the Federal Power Commission which gave the contracts validity, or which created a right to sue for payments made in excess of the contract price. The filing of the contracts is merely for the purpose of notice and to permit the Commission to exercise its review function. *Mobile* made that abundantly clear.

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[23] That Mobile's right to its contract rate stemmed from its contract and not from the Natural Gas Act, is made all the more clear from *United Gas Pipe Line* v. *Memphis Light, Gas and Water Division*, 358 U.S. 103 (1958). In the latter case, the right of United to increase its rates was based on its contract. In the *Mobile* case, no such right was contained in the contract.

Could it be successfully contended that Cities would have no cause of action for breach of contract had Petitioners failed or refused to file the contracts with the Federal Power Commission? We think not. See *Natural Gas Pipe Line Company of America* v. *Harrington*, 246 F.2d 915, 919 (5th Cir., 1957).

This Court has been unwilling to imply an abrogation of common-law rights and remedies without a strong showing of statutory design. This is because "* * * a statute will not be construed as taking away a common-law right existing at the date of its enactment unless that result is imperatively required * * *."

See *Texas & Pacific Ry.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426, 437 (1907). No policy reason exists for abrogation of Cities' right to relief in state courts. Nor has a showing been made by Petitioners of a statutory design to abrogate common-law rights.[24] Indeed, as is shown above, this Court has unequivocally held that the Natural Gas Act evinces no purpose to abrogate private rate contracts.[25]

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[24] As recited by Texaco (Texaco Brief, pp. 26-29), the legislative history shows that Congress intended to establish exclusive, instead of concurrent, jurisdiction over suits brought to enforce a liability or duty created by the Act; but it does not indicate that Section 22 was intended to abolish state court jurisdiction of claims—like those of Cities—which are "founded * * * upon a private contract deriving its force from state law" (See R. 41).

[25] The contracts filed with the Commission contain a great number of provisions, other than rate provisions (R. 339-553; 68-109) Cf. *Texas Gas Transmission Co.* v. *Shell Oil Co.*, 363 U.S. 263 (1960). Under Petitioners' theory, a suit for violation of any of the numerous provisions of such contract would be a suit brought to enforce a liability or duty created by the Natural Gas Act, inasmuch as such provisions would be just as much a part of the "filed rate schedule" as the price provisions. The mere assertion of such proposition emphasizes the hollowness of Petitioners' theory.

F. Uniformity of Decision Would Not Be Aided By Denying State Court Jurisdiction.

The assertion (Pan American Brief, p. 51) that state court jurisdiction would destroy the "comprehensive scheme of federal regulation," has long ago been rejected by this Court.

The entire scheme of our judiciary, consisting of state and federal courts, is based upon the well-recognized premise that state courts are perfectly capable of deciding federal questions injected into cases as a defense. *Pratt* v. *Paris Gaslight & Coke Co.*, 168 U.S. 255 (1897); *New Marshall Engine Co.* v. *Marshall Engine Co.*, 223 U.S. 473 (1912); *State of Arkansas* v. *Kansas & Texas Coal Co.*, 183 U.S. 185 (1901).

In *Amalgamated C. W. of A.* v. *Richmond Bros.*, 348 U.S. 511, 518 (1954), this Court again expressed its confidence in the adequacy of state judicial systems to pass upon federal questions. There the Court observed that erroneous decisions on federal questions are not confined to state courts.

Pan American's reliance (Brief, pp. 51-53) upon cases involving the National Labor Relations Act and the National Labor Management Relations Act in support of its uniformity argument is misplaced. These cases do not involve the question of state court versus federal court jurisdiction. Rather, these cases involve the question of administrative agency jurisdiction versus court (either state or federal) jurisdiction. *Garner* v. *Teamsters, Chauffeurs and Helpers*, 346 U.S. 485, 490-491 (1953).

Long ago this Court held that uniformity of decision is assured by review afforded by this Court. *Great Northern Railway Co.* v. *Merchants Elevator Co.*, 259 U.S. 285 (1922):

> "This argument is unsound. It is true that uniformity is the paramount purpose of the Commerce Act. But it is not true that uniformity in construction of a tariff can be attained only through a preliminary resort to the Commission to settle the construction in dispute. Every question of the construction of a tariff is deemed a question of law; and where the question concerns an interstate tariff it is one of federal law. If the parties properly preserve their rights, a construction given by any court, whether it be federal or state, may ultimately be reviewed by this court either on writ of error or on writ of certiorari; and thereby uniformity in construction may be secured * * *."

The foregoing, we respectfully submit, makes abundantly clear that the actions here involved are common-law actions in contract and restitution; that the actions were not brought to "enforce any liability or duty created by" the Natural Gas Act; and that, therefore, such actions do not come within the purview of Section 22 of the Act.

III.

PETITIONERS' FILED RATE DEFENSES HAVE NO MERIT. PETITIONERS' FILED RATE IS THE CONTRACT RATE.

Petitioners seek to have this Court review the merits of their filed rate defenses prior to a trial on the merits of the cases below. As we have emphasized previously, questions as to the merits of Petitioners' defenses are being pre-

maturely raised. However, since Petitioners have devoted major portions of their briefs to the argument that Cities is seeking to collaterally attack filed rates, we shall demonstrate below that these contentions are without substance.

Underlying Petitioners' arguments as to the merits of their filed rate defenses is the false premise that their rate schedule filings fixed an 11¢ rate irrespective of the invalidity of the Kansas minimum price order.

The premise flies in the teeth of the decisions in *Natural Gas Pipeline Co.* v. *Federal Power Commission*, 253 F.2d 3 (3rd Cir., 1958), *cert. denied, sub nom., Dorcester Corporation* v. *Natural Gas Pipeline Co.*, 357 U.S. 927 (1958); *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F.2d 860 (10th Cir., 1958), *cert. denied, sub nom., Magnolia Petroleum Co.* v. *Federal Power Commission*, 358 U.S. 837 (1958). In both of those cases the courts held that where producers filed void minimum price orders as part of their rate schedules, the order was a nullity[26] and the legally effective rate accepted by the Commission was the rate fixed in the valid and binding contract between the parties.

In the *Cities Service case, supra*, the Court of Appeals in dealing with the void Kansas order, stated (255 F.2d at 865):

> "* * * When the United States Supreme Court struck down the Kansas order, there was no longer a valid order which could modify the contract rate and the contract rate was the rate effective on June 7, 1954.

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[26] Contrary to Petitioners' repeated assertions, it was the Kansas order —not some Commission action upon the rate schedule—which the Delaware Courts viewed as a "nullity" (R. 20, 45). See Pan American Brief, pp. 13, 17, 18, 38, 50, 53; Texaco Brief, pp. 2, 18, 19, 20.

See Natural Gas Pipeline Company of America v. Federal Power Commission, supra."

As stated above, Petitioners concede that the above holdings are correct. They contend, however, that the above decisions are inapposite because they involved direct appeals from Commission action, whereas here, Cities did not protest Petitioner's rate schedule filings or the Commission's acceptance thereof. Thus, they contend that the filed rate became 11¢ by virtue of Cities' failure to exhaust administrative remedies pursuant to Section 19 of the Act (Pan American Brief, pp. 42-45; Texaco Brief, pp. 19-20).

This argument assumes, of course, that Cities was aggrieved by some Commission action. As shown hereinafter, however, there was no reason to protest because Petitioners' rate schedules accurately reflected the agreement between the parties as of June 7, 1954. In accepting such agreement and the other documents tendered by Petitioners, the Commission carefully preserved Cities' substantive rights. For these reasons, as well as others, there was no need to exhaust administrative remedies.

1. Cities Had No Cause to Protest Petitioners' Rate Schedule Filings Since They Accurately Reflected the Binding Agreement of the Parties As of June 7, 1954.

Contrary to the implication in Petitioners' briefs, there was no reason for Cities to protest Petitioners' rate schedule filings since they accurately reflected the binding agreement between the parties as of June 7, 1954. The basic agreement between Cities and Petitioners provided that Cities agreed to pay a certain price for gas purchased, which

in each case was less than 11¢ per Mcf (R. 69-109, 238-259). The contracts further provided that they were subject to "* * * valid present and future orders, rules and regulations of duly constituted authorities having jurisdiction" (R. 78, 255). Thus, the effect of the 11¢ Kansas minimum price order was to amend the price provisions of the basic agreement if—and only if—the Kansas order was valid.

This was the status of the agreement between Cities and Petitioners as of June 7, 1954, and it is the agreement which is reflected in the rate schedules filed by Petitioners with the Commission. This was the only agreement which Petitioners had and could file with the Commission. This is the only agreement which the Commission could and did accept.

Texaco's Rate Schedule Filing

As stated previously, the rate schedule documents tendered by Texaco in 1954 consisted only of its original contract with Cities, dated June 16, 1949, and a letter amendment thereto (R. 126-138). Texaco did not submit a copy of the Kansas order.[27]

The only reference by Texaco to the 11¢ price was in the billing statements attached to the rate schedule and in such billing statements Texaco noted that the 11¢ price was in accordance with the Kansas minimum price order

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[27] As discussed hereinafter, Texaco, in June, 1957, supplemented its filing to include a copy of the Order and a copy of the January 21, 1954 letter to reflect the conditional and contingent basis upon which it was then collecting the 11¢ price.

(R. 130-138).[28] Since the basic contract filed by Texaco showed that the Kansas ordered price applied, if valid, the rate schedule filed by Texaco reflected the status of the agreement as of June 7, 1954. Texaco made no claim to an unconditional price of 11¢ per Mcf and, therefore, Cities had no reason to protest.

Pan American's Rate Schedule Filing

Cities also had no reason to protest Pan American's rate schedule filing in 1954 because it also accurately reflected the binding agreement of the parties as of June 7, 1954. Pan American tendered the basic contract, numerous supplements and amendments (not material here), and a copy of the Kansas order (R. 591-599). In its covering letter, Pan American expressly stated that the initial rates were "set forth in the gas sales contract" appended to the letter of transmittal (R. 591-592). In tendering the copy of the Kansas order, Pan American specifically recognized that the effect of such order on the basic contract was conditional on its validity (R. 597-598). Like Texaco, Pan

[28] The billing statement, as stated previously, is not a part of the rate schedule (18 C.F.R. 154.93), but is required by a separate regulation to be attached thereto (18 C.F.R. 154.92). The Courts of Appeal have held that the effective rate is derived from the rate schedule without reference to the billing statement. Thus, it is not the amount that was being paid on June 7, 1954, that is controlling, but rather the amount the producer was entitled to by contract as of that date. *Phillips Petroleum Company* v. *Federal Power Commission*, 227 F.2d 470 (10th Cir., 1955), *cert. denied, sub nom., Michigan-Wisconsin Pipe Line Co.* v. *Phillips Petroleum Co.*, 250 U.S. 1005 (1956); *Kerr-McGee Oil Industries, Inc.* v. *Federal Power Commission*, 260 F.2d 602 (10th Cir., 1958); *Phillips Petroleum Company* v. *Federal Power Commission*, 258 F.2d 906 (10th Cir., 1958).

American made no claim to an unconditional 11¢ price, and therefore, there was no reason to protest.

Petitioner's Filings in 1957 to Reflect Kansas Severance Tax

Pan American asserts that since July 1, 1957, its filed rate has been 11.0715 by virtue of its filing made in June, 1957, to permit contractual reimbursement of a portion of the Kansas severance tax (Pan American Brief, pp. 5-7).[29] Texaco makes an obscure argument that the Commission's acceptance and allowance of this increase without formal protests by Cities supports its position that the Commission originally accepted an 11¢ rate (Texaco Brief, pp. 10-13).[30]

In 1957 the State of Kansas enacted a 1% severance tax on natural gas. By the terms of the basic contract between Cities and Petitioners, Cities had agreed to bear 50% of the tax in the Texaco contract (R. 78) and 65% in the Pan American contract (R. 255). The Federal Power Commission by its Order 197 (R. 743-745) announced that all producers could file for reimbursement of the tax to the extent allowed by contract, and that such increase would be allowed without suspension or hearing. In June, 1957, Pan American and Texaco submitted their filings to the Commission "* * * pursuant to Commission Order No. 197 to reflect * * * reimbursement of the Kansas tax * * *" (R. 647, 145).

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[29] The Kansas severance tax was held unconstitutional in March, 1958. *State* v. *Kirchner*, 182 Kan. 622, 322 P.2d 759, and is no longer being paid.

[30] The weakness of Pan American's assertion is demonstrated by the fact that Texaco does not claim that its similar filing increased its rate (Texaco Answer, R. 59-68).

In connection with Texaco's tax reimbursement filing, the Commission discovered that Texaco had not submitted the Kansas 11¢ minimum price order as part of its initial June 7, 1954 rate schedule filing; and, therefore, it advised Texaco by letter dated July 13, 1957, that its latest filing was subject to rejection unless it submitted copies of the Kansas 11¢ order and any agreement by buyer to pay the rate on a contingent or conditional basis (R. 149). Pursuant to such letter, Texaco transmitted to the Commission copies of the Kansas 11¢ order, and Cities' letter of January 21, 1954, which it described as "*setting forth the contingent or conditional basis upon which the minimum rate will be paid.*" (R. 153).

Thereafter, the Commission by letter accepted Texaco's filing without mention of a "rate" and subject to the usual qualification in such letters that such acceptance is not "* * * deemed as recognition of any claimed contractual right or obligation associated therewith * * *" (R. 157-158). Thus, it is clear that the Commission was carefully preserving contract rights in accepting these tenders.

Likewise, the Commission's letter accepting Pan American's filing for tax reimbursement made it clear that such acceptance was not "* * * deemed as recognition of any claimed contractual right or obligation associated therewith * * *" (R. 654).

In view of Cities' contractual obligation to reimburse Petitioners for a portion of the severance tax, if valid, and the Commission's careful preservation of contract rights in allowing reimbursement, Petitioners' arguments with regard to their 1957 rate filings are clearly without merit.

The foregoing shows that there was no reason for Cities to protest Petitioners' rate schedule filings either in 1954 or 1957, since they accurately showed the conditional basis upon which Cities was paying the 11¢ Kansas ordered price.

***B.* Cities Was Not Aggrieved by the Acceptance of the Documents Tendered by Petitioners.**

Petitioners make a substantial effort to convince this Court that in accepting the documents tendered by Petitioners the Commission modified Cities' contract rights. Petitioners assert that the Commission without notice, without providing a hearing, and without making necessary findings, modified and set aside Cities' contractual right to refunds and established a legally effective rate of 11¢, irrespective of the Kansas order's invalidity (Pan American Brief, pp. 4-5; Texaco Brief, pp. 7-8). The lack of substance in these contentions is shown by the following facts.

When the Commission acted on these rate filings, it had only recently been advised by this Court's decision in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954), that sales of gas by independent producers in interstate commerce for resale were subject to regulation under the Natural Gas Act. In order to implement this ruling, the Commission, on July 16, 1954, issued its Order 174 (later replaced or supplemented by Orders 174-A and 174-B) requiring producers, such as Petitioners, selling gas in interstate commerce for resale, to file their contracts as their "rate schedules" [18 C.F.R. 154.92(a)].

However, since these sales by producers previously had not been regulated, there was neither uniformity in the producer prices nor any general price for a group of sales. To the contrary, each sale by a producer had been separately negotiated between the parties and the terms and conditions thereof were typically embodied in a contract and amendments supplementary thereto, each tailored to the circumstances of the particular transaction involved.

In recognition of the amorphous situation thus prevailing as to producer prices and contracts, the Commission in its 174 series of orders defined "rate schedule" as the "basic contract and all supplements and agreements amendatory thereof, effective and applicable on and after June 7, 1954 * * *" (18 C.F.R. 154.93). It should be noted that there was no requirement as to the filing of any "rate." Nor did the Commission's 174 series of orders purport to determine the rates required to be paid for gas. All that the Commission required was the filing of the above enumerated documents, which *documents* constituted the "rate schedule."

The Commission's acceptance of producer rate schedules tendered pursuant to these requirements were not intended by the Commission to suggest Commission approval of any rate, or even to imply any views as to the effective rate on June 7, 1954.[31] For the Commission to have gone beyond the mere acceptance of the tendered documents for filing would have involved an impossible work load, in view

[31] For example, 18 C.F.R. §154.101 provides: "Acceptance for filing of any rate schedule or part thereof, or of a Notice of Cancellation or Termination, is not to be construed as approval by the Commission, nor to serve in lieu of any requirements under §7 of the Natural Gas Act."

of the literally thousands of such filings made at that time, their complete lack of homogeneity, and the need for expeditious action in order to begin producer regulation.[32]

Indeed, if the Commission had intended that its acceptance of rate tenders should mean anything more than that the documents tendered complied with the procedural requirements of the Commission's regulations, it would presumably have provided in its regulations relative to these filings, as it did with regard to new sales made after the effective date of the regulations and with regard to rate changes [see 18 C.F.R. 154.92(f)], for notice to interested parties and hearings with regard thereto. The fact that the Commission imposed no such requirements with reference to initial filings of rate schedules effective June 7, 1954, demonstrates further that the Commission's acceptance of these rate schedule tenders merely constituted advice that the documents tendered complied with the Commission's regulations and nothing more.

C. The Commission's Actions Carefully Preserved Substantive Rights.

For the foregoing reasons, the Commission was careful in the promulgation of its regulations, and in accepting rate schedules for filing not to disturb substantive rights. This is shown by the Commission's opinion submitted with Order No. 174-B interpreting the regulations promulgated

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[32] For example, the Federal Power Commission's Thirty-fifth Annual Report (page 108) shows that in the fiscal year 1955 the Commission received 10,978 rate schedule filings from independent producers in that single fiscal year.

for both the filing and acceptance of producers' rate schedules. The Commission stated:[33]

> "4. Many of the petitions for rehearing, although objecting to the lack of notice when the rules were originally adopted, recommended changes which would be of a distinctively substantive nature. Substantive rules, however, do not appear desirable in connection with the filings with which these rules are concerned and it is the intention of the Commission to relate these rules strictly to procedural matters."

In its form letters of acceptance to Petitioners, the Commission was careful to preserve the contractual rights of the parties. The letter made no mention of an 11¢ price but simply listed the documents which had been tendered and accepted for filing (R. 138-143, 601-607). The letter contained the following qualifying provisions (R. 139, 601-602):

> "This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; *nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith;* and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company."

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[33] 19 Fed. Reg. 8807.

It is clear that by its action the Commission simply acknowledged that the documents tendered by Petitioners complied with the procedural requirements of Order 174-A, and that the Commission itself did not regard its acceptance of the documents tendered as modifying contract rights. Thus, even if the Commission had provided Cities with an opportunity to protest, there would have been no reason to do so.

1. ***Petitioners' Reliance on the Tabulation Attached to the Commission Minutes Is Without Merit.***

Petitioners rely heavily on a tabulation attached to the Commission's minutes for their contention that the Commission modified Cities' contract rights and established an unconditional legally effective rate of 11¢ per Mcf. Pan American states (Brief, pp. 4-5):

> "On January 26, 1955, the Commission duly convened and, among other matters, considered Petitioner's tendered rate (R. 635, 636). The minutes of this meeting of the Commission show that the Commission construed the tendered rate schedule as providing for a rate of 11 cents per Mcf (footnote omitted). The minutes record that upon the basis of documents tendered and this construction thereof, the Commission entered under 'Summary of Independent Producers Rate Filings—Rates in Effect on June 7, 1954' a rate of 11 cents per Mcf for the sale involved (R. 639). The minutes further record that the Commission voted to accept the tendered rate of 11 cents per Mcf for filing; the rate of 11 cents thus was made effective as the rate accepted by the Commission as the filed rate, and was thereupon entered in the Commission's public files and records as such (R. 636)."

Texaco makes similar contentions (Brief, pp. 7-8).

Petitioners take the far-fetched position that this private meeting by the Commission constituted an adjudication of Cities' contract rights. In the first place, the minutes upon which Petitioners rely show that in a single day the Commission considered and accepted for filing numerous rate schedules which had been filed (R. 222-225, 635-639). Since Pan American's single rate schedule covering sales to Cities consists of 214 pages (R. 281), it does violence to reason to contend that the Commission adjudicated the rights of all parties as to all the rate schedules it voted on in a single day.[34] Indeed, the only mention of an 11¢ price in the minutes, is in the tabulation attached thereto, and such tabulation contains a footnote showing that the price was based on the Kansas order (R. 225, 639). Since the Commission also voted to accept for filing the basic contract between Cities and Petitioners, it is certainly more reasonable to assume that the Commission accepted whatever was the valid and binding agreement between the parties as of June 7, 1954, instead of any given rate. This is particularly so since the Commission regulations specifically provided that this was what the Petitioners were directed to file [18 C.F.R. 154.92(c), 18 C.F.R. 154.93].

Indeed, Petitioners' reliance upon tabulations attached to the Commission's minutes as a determination of substantive rights is wiped out by the Commission's unequivo-

[34] For example, the minutes of the meeting wherein Pan American's rate schedule was accepted indicate that it took 13 separate tables to list the rate schedules that were accepted in a single day. The one table on which Pan American relies consisted of 23 sheets of tabulations (R. 636-639).

cal statements in parallel cases that such lists, even when included in formal published Commission orders, are only what the applicant reported to be the presently effective rates and is "* * * not intended as a Commission determination that the listed rates are the presently effective legal rates." *Pan American Petroleum Corp., et al.*, Docket No. RI60-208, order issued April 22, 1960, rehearing denied June 4, 1960.[35]

Moreover, Petitioners' contentions that the Commission set aside Cities' contract rights and established an unconditional rate of 11¢ per Mcf is effectively rebutted by the Commission's order approving settlement rates for Cities (R. 556-586). Since that order specifically provided that Cities would have to make refunds to its jurisdictional customers of amounts received by Cities for excess payments made pursuant to the Kansas order, it clearly demonstrates that the Commission preserved Cities' substantive rights. It would have been useless to impose such a condition in the rate settlement order if the Commission had destroyed Cities' right to refunds.

There is no reason to presume, as Petitioners suggest, that the Commission intended to modify existing contractual relations without notice, without a hearing and without proper findings based on substantial evidence. There has never been any doubt, even prior to this Court's decision in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp., supra*, that the Commission lacked authority to modify a contract without a hearing and proper findings.

[35] For the convenience of the Court, the Commission order is attached hereto as Appendix B.

As early as 1944, the Court, in *Colorado Interstate Gas Co.* v. *Federal Power Comm.*, 142 F.2d 943, 954 (10th Cir., 1944), affirmed, 324 U.S. 581, stated:

> "* * * The passage of the Act did not automatically overthrow the contracts into which these companies had previously entered. Neither did it ipso facto set aside the schedules of charges upon which they had agreed. Such rates and charges could be modified only after an express finding of unreasonableness."

In light of the foregoing, Petitioners' arguments that the Commission in a private meeting deliberately intended to modify contractual rights without notice, witnout a hearing and without necessary findings, violates the cardinal principle "* * * that a public official is presumed to act in accordance with his authority." *United States* v. *Tarumianz*, 242 F.2d 191 (3rd Cir., 1957).

2. *Petitioners' Certificate Proceedings.*

Equally without merit is Texaco's contention that Cities should have protested at the time the Commission issued it a certificate (Brief, p. 10). The certificate requested and received by Texaco was to continue the service being rendered pursuant to the terms of the basic contract with Cities. The order made no mention of price (R. 173-176, 179-191). This certainly provided no cause for

complaint by Cities.[36] Indeed, if Texaco was dissatisfied with the terms and conditions of the basic contract, and wanted an unconditional rate of 11¢ per Mcf, it should have requested relief from the Commission under Section 5 of the Act.[37]

The certificate issued to Pan American demonstrates the lack of merit in Texaco's arguments.[38] In its order issuing a certificate to Pan American the Commission held (Appendix A hereto):

> "* * * it is neither necessary nor appropriate for the Commission to determine in this proceeding what is the price for the sale by Pan American to Cities, or to pass on the various issues related to this dispute * * *. The dispute between Pan American and Cities Service over the price for this sale is being litigated by the parties in the Kansas courts,[39] and the matter may reasonably be left for disposition by the courts."

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[36] Texaco relies on the *Catco* decision (Brief, pp. 20-21) for the contention that the Commission authorized the 11¢ rate unconditionally. The *Catco* decision simply holds that when the initial price is on its face "out of line," then the Commission must determine whether the price is required by the public convenience and necessity. Here, all prices in the Kansas-Hugoton Field were artificially 11¢ because of the Kansas order. Thus, the Commission authorized a continuation of the service under the terms of the contract, thereby making the Kansas ordered price applicable, if such order as a matter of law was valid.

[37] See, *United Gas Pipe Line Co.* v. *Mobile Gas Corp.*, *supra*, 350 U.S. at 344-5, which described the "avenue of relief" available to the seller under Section 5 of the Act, if the contractual terms are improvident.

[38] The facts with regard to Pan American's certificate proceeding, described below, are set forth in the Commission's certificate order issued December 1, 1960, which for the convenience of the Court is attached hereto as Appendix A.

[39] After the Kansas order was declared invalid, Cities resumed payments at the contract price. Thereafter, Pan American filed suit in the Kansas state courts for a declaratory judgment.

Accordingly, the Commission ordered:

> "(C) The issuance of this certificate does not constitute a determination of what was or is the price for the sale by Pan American to Cities Service, and is without prejudice to whatever determinations may be reached on the dispute between Pan American and Cities Service concerning this matter, or the rights of the parties in regard to this matter."

The foregoing demonstrates that at no time has the Commission issued a definitive order determining rights adversely to Cities. For this reason Cities had no cause to protest or object.

D. The Commission Was Not a Proper Forum for Determining the Validity of the Kansas Order.

Since the Kansas order was presumptively valid when Petitioners made their rate schedule filings in 1954 and 1957, the Commission had no choice but to accept such order as part of the rate schedule for whatever it was worth. It clearly would have been improper for Cities to have protested such acceptance prior to the time the order was declared invalid, since the Commission was not the proper forum for determining the validity of the Kansas order.[40]

Thus, a protest at the time of Petitioners' initial rate schedule filing would have been an empty gesture. This

[40] As the Commission has long ago stated, "the appropriate place for the determination of the validity of such state laws is in the courts." *First Iowa Hydro-Electric Cooperative*, 4 F.P.C. 27, 31 (1944). See also *Cities Service Gas Co.* v. *Federal Power Commission*, *supra*, 255 F.2d at 862.

is particularly so since Cities had already preserved its rights by its letter of January 21, 1954, and the Commission was aware of this as evidence by the rate proceeding settlement involving Cities in Docket No. G-2410 (R. 556-586) and the Commission's letter to Texaco in 1957 (R. 149).[41]

E. The Magnolia and Dorchester Decisions Apply With Full Force to the Facts in this Case.

Since the Commission issued no definitive order determining rights adversely to Cities, there was no reason to protest or to exhaust administrative remedies. Thus, Petitioners' attempt to distinguish the decisions in *Cities Service Gas Co.* v. *FPC*, *supra* (hereinafter referred to as the *Magnolia* case) and *Natural Gas Pipeline Co.* v. *FPC*, *supra* (hereinafter referred to as the *Dorchester* case) on such grounds are without merit.

The different circumstances surrounding the *Magnolia* and *Dorchester* cases show why protests were properly lodged in those cases and why here they were not. Unlike Petitioners, Magnolia Petroleum Company did not file its rate schedule for sales to Cities soon after the is-

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[41] Petitioner Pan American relies on *Tyler Gas Service* v. *FPC*, 247 F.2d 590 (D.C. Cir., 1957) and *Portsmouth Gas Co.* v. *FPC*, 247 F.2d 90 (D.C. Cir., 1957). The decisional holdings of the Court of Appeals for the District of Columbia, however, lend no support to Petitioners' position. Even the language which Pan American extracts, moreover, refers not to conduct like that of Cities, but to alleged acquiescence in unilateral rate increases in violation of contract by reason of failure to protest either to the pipeline or to the Commission. In contrast, Cities here at all times made explicit to Petitioners that it challenged the validity of the Kansas order and, accordingly, made its 11¢ payments subject to the outcome of the litigation challenging the validity of the Kansas order.

suance of Order 174. Instead, Magnolia unsuccessfully challenged the validity of such order. *Magnolia Petroleum Co. v. FPC*, 236 F.2d 785 (5th Cir., 1956), *cert. denied*, 352 U.S. 969. When Magnolia finally tendered its rate schedule to the Commission on February 19, 1957 (R. 680), this Court had already issued its decision in *Natural Gas Pipeline Co. of America* v. *Panoma Corp.*, 349 U.S. 44, striking down the Oklahoma minimum price order. Unlike the case here, Magnolia, at the time of its filing, had taken the position that Cities was not entitled to refunds if the Kansas order was declared invalid, and there was litigation pending on this issue. See 255 F.2d at 861.

Since the decision in the *Panoma* case made it clear that the Kansas order was also invalid, and since Magnolia was disputing Cities' rights to refunds, Cities felt it proper to protest Magnolia's inclusion of the Kansas minimum price order as one of the documents in its rate schedule. Cities took the position that the decision in the *Panoma* case made the Kansas order patently invalid (255 F.2d 862, footnote 1).

The Commission entered an order accepting Magnolia's rate schedule, but provided that such acceptance would be without prejudice to the rights of either party in pending litigation (255 F.2d, at 861). On rehearing, however, the Commission eliminated the without prejudice provision from its order. Cities took an appeal from this order. While the appeal was pending, this Court declared that the Kansas order was void. *Cities Service Gas Co.* v. *State Corporation Commission*, *supra*.

The Tenth Circuit set aside the Commission's order in view of the intervening invalidation of the Kansas order

by this Court. However, it ruled that the Commission had acted properly in refusing to pass on the validity of the Kansas order (255 F.2d. at 862, footnote 1):

> "* * * On the pertinent date, June 7, 1954, the authority of the Kansas Commission had been upheld by the Kansas Supreme Court, the highest judicial body that had then considered the precise question involved. It was not the function of the Federal Power Commission to pass on the question of whether or not the Kansas Supreme Court was in error. Good administrative policy dictates otherwise. The inherent difficulties that may arise from a later change in judicial interpretation are not attributable to administrative fault. Our books of law carry many cases requiring reversal of a lower court by reason of a change occurring between trial and appeal."

It is thus apparent that a protest from Cities at the time Petitioners tendered their rate schedules would have been improper because the order at that time was presumptively valid.

Unlike the situation here, both Magnolia and Dorchester, at the time of their rate schedule filings, denied any liability to make refunds to the purchaser for excess payments made pursuant to minimum price orders. Unlike the situation here, litigation was pending between the purchaser and seller as to the price issue.[42] Unlike the situation here, the Commission, in the *Magnolia* and *Dorchester* cases, had issued definitive orders determining rights adversely to the purchasers.

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[42] See: *Natural Gas Pipeline Co.* v. *Harrington*, 139 F. Supp. 452 (D.C. Tex. 1956); 246 F.2d 915 (5th Cir., 1957). The litigation between Cities Service and Magnolia is described in 255 F.2d at 861.

The situation here involved presents a striking contrast. At the time of their rate schedule filings, both Texaco and Pan American had agreed to refund to Cities the payments made in excess of the contract price, if the minimum price order was held invalid (R. 168-169, 611). Neither contended to the Commission or Cities that they were entitled to an unconditional price of 11¢. As late as July 1, 1957, Texaco advised the Commission that it was receiving the 11¢ price upon the conditions and contingencies set forth in Cities' letter of January 21, 1954 (R. 152). Before Pan American accepted its first payment, it agreed in writing to make refunds in accordance with the January 21, 1954 letter (R. 611).

The foregoing shows that the holdings in *Magnolia* and *Dorchester* to the effect that the invalid Kansas order did not modify the contract rates, apply with full force and effect to the facts in this case.

F. The Decisions on Collateral Attack Cited by Petitioners Are Not Applicable Here.

The decisions in *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co., supra; T.I.M.E., Inc.* v. *United States*, 359 U.S. 464 (1959); *United Gas Pipe Line Co.* v. *Willmut Gas & Oil Co.*, 231 Miss. 700, 97 So.2d 530 (1958), and *Texas & Pacific Railway* v. *Abilene Cotton Oil Co.*, 204 U.S. 426 (1907), all involved attempts by a party, in one form or another, to challenge the reasonableness of a rate on file with a Commission and to have that rate set aside. Petitioners' reliance on these, as well as other related cases, is clearly misplaced (See: Pan American Brief, pp. 20-25).

Cities is not claiming that the rate on file with the Commission is unreasonable, improper, or that it should be set aside or changed. Thus, Cities is in no way seeking to collaterally attack a rate schedule filed with the Commission. Indeed, it is Cities' claim that the contract rate and the legally effective rate contained in the filed rate schedules are one and the same, and for this reason Petitioners' defenses are without merit. Obviously, in order to pass upon Petitioners' defense that the filed rate is 11¢, the state court of Delaware will have to interpret the rate schedule with reference to the pertinent federal law. The lower Delaware court has not been asked to change the rate, nor has it claimed authority to do so.

The Supreme Court of Delaware merely held that a state court has jurisdiction to interpret a rate schedule in order to resolve a federal question injected defensively (R. 44-46). As previously shown, this has been well established since *Great Northern Ry. Co.* v. *Merchants Elevator Co.*, *supra*. In line with the *Great Northern* case, it has been held that the interpretation of a contract on file as a rate schedule with the Federal Power Commission "* * * presents the usual questions of law and fact which a court is authorized to handle. * * *." *Michigan Consolidated Gas Co.* v. *Panhandle Eastern Pipe Line Co.*, 226 F.2d 60 (6th Cir., 1955), *cert. denied*, 350 U.S. 987 (1956).

Any implication that there is an issue here requiring the exercise of primary jurisdiction by the Commission, is dispelled by the Commission's holding that:

"* * * The dispute between Pan American and Cities Service over the price for this sale is being litigated

by the parties in the Kansas courts, and the matter may reasonably be left for disposition by the courts" (Appendix A, hereto).[43]

The foregoing demonstrates that Petitioners' arguments with regard to collateral attack are patently without merit.

C. The Result Advocated by Petitioners Would Flout the Fundamental Purposes of the Natural Gas Act.

The Federal Power Commission's order approving settlement rates for Cities in FPC Docket No. G-2410 requires Cities to refund to its customers, in accordance with the formula set forth in the order, the major portion of the money obtained from this or similar litigation (R. 556-586).[44] Other pipelines involved in similar disputes must also make refunds to their jurisdictional customers, if they recover excess payments made pursuant to the Kansas order.[45]

Acceptance of Petitioners' arguments, however, would not only mean that Cities and its customers would be

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[43] See Appendices C and D for similar holdings by the Commission in other cases where litigation is pending concerning the effect of the void Kansas minimum price order.

[44] Cities has already commenced making refunds to its customers where it has recovered excess payments made pursuant to the Kansas order. By order issued February 28, 1961, the Commission directed that Cities make substantial refunds to its jurisdictional customers from a settlement of Cities' claim against Socony Mobil Oil Company (formerly Magnolia). *Cities Service Gas Company*, Docket No. G-2410, order issued February 28, 1961 (Appendix E, hereto).

[45] *Northern Natural Gas Company*, 16 F.P.C. 803, 807 (1956); *Natural Gas Pipeline Company of America*, 19 F.P.C. 1002, 1009 (1958); *Colorado Interstate Gas Co.*, 20 F.P.C. 874 (1958).

denied refunds for payments of the artificial price under the Kansas order for the past, but that a revival of the Kansas order would mean that Petitioners, and other producers similarly situated, would receive such payments for the indefinite future.[16]

It is clear, therefore, that the result advocated by Petitioners would contravene the basic purposes of the Natural Gas Act. It has long been established that the primary purpose of the Natural Gas Act was to protect consumers *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 612 (1944); *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 685 (1954); *Atlantic Refining Co.* v. *New York Public Service Commission*, *supra*, 360 U.S. at 388; *Federal Power Commission* v. *Transcontinental Gas Pipe Line Corp.*, U.S. , 81 S. Ct. 435, 445 (1961). Because the Kansas order would have interfered with the primary purpose of the Natural Gas Act, this Court struck it down. Petitioners now seek to revive the Kansas order on the basis of arguments which not only are defective for the reasons previously shown herein, but which are clearly overridden by the paramount purposes of the Natural Gas Act.[17]

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[16] *Atlantic Refining Co.* v. *New York Public Service Comm.*, 360 U.S. 378, 389 (1959).

[17] Compare *United States* v. *U. S. F. & G. Co.*, 309 U.S. 506 (1940); *Scott Paper Co.* v. *Marcalus Mfg. Co.*, 326 U.S. 249 (1954).

CONCLUSION

In view of the foregoing, Cities respectfully submits that the judgment of the Supreme Court of Delaware denying the Petition for a Writ of Prohibition should be affirmed.

Respectfully submitted.

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March, 1961.

APPENDIX

APPENDIX A

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, Arthur Kline and Paul A. Sweeney.

Pan American Petroleum Corporation (formerly Stanolind Oil and Gas Company)	)))	Docket No. G-4904

ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AND GRANTING IN PART AND DENYING IN PART APPEAL AND MOTIONS

(Issued December 1, 1960)

This proceeding involves an application filed by Pan American Petroleum Corporation (Pan American)[1] for a certificate of public convenience and necessity under subsections (c) and (e) of Section 7 of the Natural Gas Act (Act) authorizing the sale of natural gas to Cities Service Gas Company (Cities Service). The case is now before us by virtue of an appeal by Pan American from certain rulings of the presiding examiner at the hearing. The company's appeal, which was filed on November 10, 1958, is accompanied by motions that we order the record certified to the Commission, reverse certain rulings by the examiner, grant a continuance, and specify the issues to be heard. For the reasons hereinafter set forth, we are granting the motion that the record be certified to the Commission; and on the basis of the record, we are reversing the examiner's

[1] At the time the filing was made, the company's name was Stanolind Oil and Gas Company; the change to Pan American was made on February 1, 1957.

rulings complained of and shall hereinafter issue to Pan American a certificate of public convenience and necessity. In the light of this action, Pan American's other requests shall be denied.

The sale to Cities Service covered by Pan American's certificate application, which was filed with the Commission on November 16, 1954, is of gas from the Hugoton Field in Kansas.[2] In accordance with the Commission's Regulations, Pan American filed with its application a copy of its gas sales contract with Cities Service. The contract, which was dated June 23, 1950, and which was for a term of 20 years, provided for an initial price to Cities Service of 8.4 cents per Mcf (16.4 psia). Concurrently, Pan American filed with its application a copy of a minimum price order of the State Corporation Commission of Kansas, issued December 2, 1953, prescribing a price for sales from the Kansas Hugoton Field of 11 cents per Mcf (14.65 psia).

Likewise, on November 16, 1954, Pan American tendered for filing with the Commission as its rate schedule a copy of its aforesaid contract with Cities Service, which contract was accepted by the Commission and designated Pan American's FPC Gas Rate Schedule No. 84. Certain supplements filed with the contract included a copy of the aforesaid Kansas minimum price order, which the Commission designated as Supplement No. 77 to Rate Schedule No. 84.

Pan American's certificate application was set for hearing on September 9, 1958, under the Commission's shortened procedure. However, the intervention by Cities Service made a contested hearing necessary. The hearing was commenced on November 4, 1958, and, continuing on

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[2] The sale in question was being made on June 7, 1954, the date of the Supreme Court's decision in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, and the cut-off date under our Regulations issued in pursuance thereof.

November 6, 1958, was recessed on that date to resume subsequently. No further hearing has been held.

At the hearing, all parties and staff counsel agreed that a certificate authorizing the sale by Pan American to Cities Service should be granted. Only one matter was contested, namely, what was the price on June 7, 1954, for this sale. Pan American took the position that the correct price for the sale was then 11 cents per Mcf as provided by the Kansas minimum price order, Supplement No. 77. Cities Service took the position that the correct price was 8.4 cents per Mcf, as provided by the parties' original contract, Pan American's Rate Schedule No. 84. This dispute, however, the parties would have eliminated by their proposal on November 5, 1958, at the hearing, to enter into a stipulation providing, in effect, that a certificate should be granted but that the grant thereof would not determine the price issue and was without prejudice to the rights of either of the parties with respect to this issue.

However, the examiner refused to permit such a stipulation, ruling in essence that the question of what was the price for this sale on June 7, 1954, was in issue herein; that it was necessary to resolve this issue in this certificate proceeding; and that the parties by stipulation could not remove this issue from the case. Accordingly, the examiner directed that the hearing should subsequently be resumed with respect to this issue.

Pan American's appeal herein is aimed primarily at the above rulings of the examiner. The company contends that the price dispute between it and Cities Service need not be determined in this case, and should not be, in view of the pendency of litigation respecting this matter in the Kansas courts. Pan American also alleges that assuming the issue is properly to be determined here, the examiner erred in refusing to issue subpoenas requiring the appearances of certain witnesses claimed to be needed to testify respecting

the price issue, in refusing to grant a longer continuance to permit the preparation of Pan American's case on the price issue, and in other respects.

Cities Service filed a response to Pan American's appeal on November 21, 1958. This company takes the position that Pan American introduced the price issue by its allegation in its application that the proper rate for the sale was 11 cents, which allegation Cities Service denies; that the courts have heretofore decided the disputed price issue adversely to Pan American; and that under such judicial decisions the correct rate for this sale is 8.4 cents and the Commission should so find and should not defer decision pending any further decision on this matter by the State courts.

We are of the view that it is neither necessary nor appropriate for the Commission to determine in this proceeding what is the price for the sale by Pan American to Cities Service, or to pass on the various issues related to this dispute. This case has been long pending and it is imperative that it be disposed of without further delay. The contract price of 8.4 cents per Mcf is justified under the requirements of public convenience and necessity. The price of 11 cents per Mcf provided for by the supplement to the contract is below the price permitted by our Statement of General Policy No. 61-1 issued September 28, 1960, and obviously is also justified under the standard of public convenience and necessity. The dispute between Pan American and Cities Service over the price for this sale is being litigated by the parties in the Kansas courts, and the matter may reasonably be left for disposition by the courts.

It is obviously desirable that this order include a provision that the Commission's action herein is without prejudice to whatever determinations may be reached by the courts or the Commission with respect to the dispute between Pan American and Cities Service concerning the price for this sale.

The Commission further finds:

(1) Pan American Petroleum Corporation, the applicant herein, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is therefore a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sale of natural gas by Pan American to Cities Service hereinbefore described, as more fully described in the application, as amended, is made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by applicant, together with the operation of any facilities therefor subject to the jurisdiction of the Commission, is subject to the requirements of subsections (c) and (e) of Section 7 of the Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sale of natural gas by Pan American, together with the operation of any facilities therefor subject to the jurisdiction of the Commission, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued authorizing Pan American to sell natural gas to Cities Service, and to continue to operate any facilities subject to the jurisdiction of the Commission used for such sale, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) This certificate is not transferable and shall be effective only so long as applicant continues the acts or operations hereby authorized in accordance with the provisions of the Act and applicable rules, regulations and orders of the Commission.

(C) The issuance of this certificate does not constitute a determination of what was or is the price for the sale by Pan American to Cities Service, and is without prejudice to whatever determinations may be reached on the dispute between Pan American and Cities Service concerning this matter, or the rights of the parties in regard to this matter.

(D) Pan American's appeal and motions filed herein on November 10, 1958, are granted to the extent hereinabove set forth, otherwise, they are denied. To the extent hereinabove indicated, the above described rulings of the examiner are reversed.

By the Commission.

/s/ J. H. Gutride
Joseph H. Gutride,
Secretary.

APPENDIX B

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck and William R. Connole.

	DOCKET NOS.
Pan American Petroleum Corporation	RI60-208, -209
Pan American Petroleum Corporation (Operator), *et al.*	RI60-210
E. J. Hudson, *et al.*	RI60-211
Elliott Production Company	RI60-212
Western Natural Gas Company	RI60-213
The British-American Oil Producting Company	RI60-214
Sinclair Oil & Gas Company	RI60-215
Socony Mobil Oil Company, Inc.	RI60-216
The Shamrock Oil and Gas Corporation (Operator)	RI60-217

ORDER AMENDING "ORDER PERMITTING FILING, PROVIDING FOR HEARINGS ON AND SUSPENSION OF PROPOSED CHANGES IN RATES, AND ALLOWING INCREASED RATE TO BECOME EFFECTIVE SUBJECT TO REFUND"

(Issued April 22, 1960)

On March 25, 1960, the Commission issued its order in the above-designated proceedings suspending certain proposed increased rates. The order included a list of the rates presently in effect under the rate schedules involved in the proceedings. These rates, appearing under the "Rate in Effect" column of that order, describe only what the respondents claim to be the presently effective rates. The inclusion of the list was not intended as a Commission de-

termination that the listed rates are the presently effective legal rates. Our order should be amended to reflect the purport of the "Rate in Effect" column.

The Commission finds:

The suspension order issued March 25, 1960, in the proceedings in Docket Nos. RI60-208 through RI60-217 should be amended to include a footnote "2A" to the "Rate in Effect" column, as hereinafter ordered.

The Commission orders:

The Commission's suspension order issued March 25, 1960, in the proceedings in Docket Nos. RI60-208 through RI60-217 is amended to include a footnote "2A" to the "Rate in Effect" column appearing on pages 2 and 3 of that order, as follows: "2A/ The rates listed in this column are those claimed by the respondents to be the presently effective rates. The reflection of these rates in this manner is not a Commission determination that these are the presently effective legal rates."

By the Commission.

/s/ J. H. Gutride
Joseph H. Gutride,
Secretary.

OGC
AJSR:lc
4/21/60

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, William R. Connole and Arthur Kline.

	DOCKET NOS.
Pan American Petroleum Corporation	RI60-208, -209
Pan American Petroleum Corporation (Operator), *et al.*	RI60-210
E. J. Hudson, *et al.*	RI60-211
Elliott Production Company	RI60-212
Western Natural Gas Company	RI60-213
The British-American Oil Producing Company	RI60-214
Sinclair Oil & Gas Company	RI60-215
Socony Mobil Oil Company, Inc.	RI60-216
The Shamrock Oil and Gas Corporation (Operator)	RI60-217

ORDER PERMITTING FILING, PROVIDING FOR HEARINGS ON AND SUSPENSION OF PROPOSED CHANGES IN RATES, AND ALLOWING INCREASED RATE TO BECOME EFFECTIVE SUBJECT TO REFUND[1]

(Issued March 25, 1960)

The above-named respondents have tendered for filing proposed changes in presently effective rate schedules for the sale of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

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[1] This order does not provide for the consolidation for hearing or disposition of the separately-docket matters covered herein, nor should it be so construed.

Docket No.	Respondent	Rate Sched. No.	Supp. No.	Purchaser and Producing Area	Notice of Change Dated	Date Tendered	Effective Date 2/ Unless Suspended	Date Suspended Until	Rate in Effect	Proposed Increased Rate 1/	Rate in Effect Subject To Refund in Docket Nos.
									(Cents per Mcf)		
RI60-208	Pan American Petroleum Corp.	38	6	Northern Natural Gas Co. (Hugoton Fld., Haskell Co., Kan.)	2-24-60	2-26-60	8-10-60	1-10-61	11.0	15.0	
RI60-210	Pan American Petroleum Corp. (Operator), et al.	37	13	Northern Natural Gas Co. (Hugoton Fld., Haskell Co., Kan.)	2-24-60	2-26-60	3-23-60	8-23-60	11.0	15.0	
RI60-211	E. J. Hudson, et al.	8	3	Tennessee Gas Transmission Co. (W. Delta Parma Fld., Lafourche Par., La.)	2-18-60	2-29-60	3-31-60	8-31-60	13.5	16.5	
RI60-212	Elliott Production Co.	1	2	El Paso Natural Gas Co. (Dilworth & Tuch Flds., Lea Co., N. Mex.)	Undated	2-29-60	3-31-60	8-31-60	9.5	13.5	
RI60-213	Western Natural Gas Co.	17	5	Cities Service Gas Co. (Hugoton Fld., Grant & Stanton Cos., Kan.)	Undated	2-26-60	4-1-60	9-1-60	11.0	15.0	
RI60-214	The British-American Oil Producing Co.	11	2	Lone Star Gas Co. (N. E. Kimore Fld., Garvin Co., Okla.)	2-23-60	2-26-60	3-28-60	8-28-60	11.0	15.0	G-10293
RI60-215	Sinclair Oil & Gas Co.	17	5	Phillips Petroleum Co. (W. Panhandle Fld., Hutchinson Co., Tex.)	2-24-60	2-26-60	4-1-60	9-1-60	11.1056 3/ 10.6547 3/	12.1152 11.6643	G-10293

Docket No. RI60-208, et al.

Docket No.	Respondent	Rate Sched. No.	Supp. No.	Purchaser and Producing Area	Notice of Change Dated	Date Tendered	Effective Date 2/ Unless Suspended	Date Suspended Until	Rate in Effect	Proposed Increased Rate 1/	Rate in Effect Subject To Refund in Docket Nos.
									(Cents per Mcf)		
RI60-214	Sinclair Oil & Gas Co.	16	5	Phillips Petroleum Co. (W. Panhandle Fld., Hutchinson Co., Tex.)	2-24-60	2-26-60	4-1-60	9-1-60	11.1056 3/ 10.6547 3/	12.1152 11.6643	G-10293
		25	5	Phillips Petroleum Co. (W. Panhandle Fld., Hutchinson Co., Tex.)	2-24-60	2-26-60	4-1-60	9-1-60	11.1056 3/ 10.6547 3/	12.1152 11.6643	G-10293
RI60-216	Socony Mobil Oil Co., Inc.	99	6	Tennessee Gas Transmission Co. (Bethany Fld., Panola Co., Tex.)	2-25-60	2-26-60	4-1-60	9-1-60	13.5	14.4248	
		225	2	Lone Star Gas Co. (Katie Fld., Garvin Co., Okla.)	2-25-60	2-26-60	3-28-60	8-28-60	11.0	16.8	
RI60-217	The Shamrock Oil and Gas Corporation (Operator)	4	16	Panhandle Eastern Pipe Line Company (Panhandle Fld., Moore and Sherman Cos., Texas)	2-23-60	2-26-60	3-28-60	3-29-60	7.3044 3/ 9.7461 3/	7.9976 10.5165	3/ 3/

1/ The stated effective rates are those requested by respondents or the day after the required thirty days' notice, whichever is later.

2/ The stated rates of E. J. Hudson, et al. are at a pressure base of 15.025 psia. The other rates are at a pressure base of 14.65 psia.

3/ or until five months after the rate suspended in RI60-168 is made effective, if later.

4/ Sweet gas.

—10a—

—11a—

In support of their proposed increased rates, Pan American Petroleum Corporation (Pan American) and Pan American Petroleum Corporation (Operator), *et al.* submit a price arbitration decision and cite the pricing provisions in their contracts. They also state that the contracts were negotiated at arm's length; that gas is priced below competing fuels; and that producer rates should be judged according to prices appearing in currently negotiated contracts, which prices are above the proposed rates. It does not appear that Pan American's FPC Gas Rate Schedule No. 38 provides for price arbitration; rather it provides for a price equal to the price paid under another contract. That other price is presently under suspension in Docket No. RI60-168 until August 10, 1960, or until such further time as it is made effective in the manner prescribed by the Natural Gas Act. Pan American's proposed changes under its Rate Schedule No. 38 may be accepted for filing, but should be suspended for five months after the suspended rate in RI60-168 is made effective.

In support of its proposed periodic increased rate, E. J. Hudson, et al. (Hudson) states that the proposed rate is required to compensate for increased costs and to encourage the maximum production of gas. Hudson also states that the proposed increase is less than a favored-nation increase, the right to which Hudson has waived, and less than a redetermined increase, which Hudson might still file for.

In support of its proposed renegotiated increased rate, Elliott Production Company (Elliott) states that it agreed to give up the favored-nation clause in its contract in return for the proposed price; that such a move will benefit the public by helping stabilize producer prices; and that the price is in line with others in the area.

Western Natural Gas Company (Western Natural) states that its contract comprising its FPC Gas Rate Schedule No. 17 terminates as of April 1, 1960. Western Natural

has applied under Docket No. G-18662 for permission to abandon the present service and under Docket No. G-18661 for a certificate to sell to another purchaser (at the price proposed herein).

In support of its proposed periodic increased rate, The British-American Oil Producing Company cites its contract, states it was negotiated at arm's length, and states that periodic pricing provisions are a common way of providing for lower initial prices.

In support of its proposed periodic increased rates, Socony Mobil Oil Company, Inc. states that its contract was negotiated at arm's length for the installment sale of gas, that gas should be priced on a commodity basis, and that costs have been steadily increasing.

In support of its proposed periodic increased rates, Sinclair Oil & Gas Company cites its contracts, states it negotiated at arm's length, and states that the proposed prices are in line with recently certificated prices in the area.

In support of its proposed increased rates, The Shamrock Oil and Gas Corporation (Operator) (Shamrock) refers to its cost of service studies submitted under Docket Nos. G-14077 and G-12307. Shamrock also cites its contract and states the Commission has accepted increases to higher rates in the area. Shamrock further states that the proposed rates are lower than the prices of competitive fuels and that its costs are rising more and more above its jurisdictional revenues. Shamrock's proposed rates are based on a contract provision entitling it to certain increases if Panhandle Eastern Pipe Line Company (Panhandle) receives increased rates. Panhandle has filed for increased rates, which have been suspended under Docket No. G-19730 until March 26, 1960 or until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

The proposed changes may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds;

(1) Good cause exists for waiving the 90-days-maximum notice limit of Section 154.94(b) of the Commission's Regulations under the Natural Gas Act and for permitting the filing of Supplement No. 6 to Pan American's FPC Gas Rate Schedule No. 38.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

(3) It is necessary and proper in carrying out the provisions of the Natural Gas Act that Supplement No. 16 to Shamrock's FPC Gas Rate Schedule No. 4 be allowed to take effect subject to refund upon the timely filing of an agreement and undertaking, as hereinafter ordered.

The Commission orders:

(A) The 90-days-maximum notice limit of Sections 154.94(b) of the Commission's Regulations under the Act is waived and the filing of Supplement No. 6 to Pan American's FPC Gas Rate Schedule No. 38 is permitted.

(B) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act (18 CFR, Chapter I), public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements.

(C) Pending hearings and decisions thereon, each of the above-designated supplements is hereby suspended and the use thereof deferred until the date indicated in the above "Rate Suspended Until" column, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(D) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(E) Supplement No. 16 to Shamrock's FPC Gas Rate Schedule No. 4 shall be effective as of March 29, 1960, or as of the day after the rates suspended under Docket No. G-19780 are made effective, whichever is later: *Provided*, that within 20 days from the date of this order, Shamrock shall execute and file under Docket No. RI60-217 with the Secretary of the Commission an agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and Section 154.102 of the Regulations thereunder (prescribed by Order No. 215 and Order No. 215A). The agreement and undertaking shall be signed by a responsible officer of Shamrock, shall be attested, and shall be accompanied by proper authorization from the board of directors and by a certificate showing service of copies upon all purchasers under the rate schedule involved. Unless Shamrock is advised to the contrary within 15 days after the filing of such agreement and undertaking, it shall be deemed to have been accepted for filing.

(F) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the Rules of Practice and Procedure [18 CFR 1.8 or 1.37(f)] on or before May 11, 1960.

By the Commission. Commissioner Kline dissenting as to the suspension of the rate filings in Docket Nos. RI60-215 and RI60-217 and Supplement No. 6 to Socony Mobil's FPC Gas Rate Schedule No. 99 in Docket No. RI60-216. He would reject the rate filings in Docket No. RI60-214 and Supplement No. 2 to Socony Mobil's FPC Gas Rate Schedule No. 225 in Docket No. RI60-216.

Commissioner Connole not participating in Docket Nos. RI60-208 through Docket No. RI60-216.

/s/ J. H. Gutride
Joseph H. Gutride,
Secretary.

APPENDIX C

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, Arthur Kline and Paul A. Sweeney.

Socony Mobil Oil Company, Inc. (formerly Magnolia Petroleum Company)	)))	Docket No. G-16717

ORDER DENYING APPLICATION FOR REHEARING
(Issued January 24, 1961)

On December 20, 1960, Socony Mobil Oil Company, Inc., filed an application for rehearing of the Commission's order issued herein on November 22, 1960, denying its petition for determination of the effective rate on June 7, 1954, for the sale of gas to Cities Service Gas Company from the Hugoton Field, Kansas. The Kansas minimum price orders having been held invalid by the United States Supreme Court, dispute has arisen between these two companies as to the correct price for this sale. In our order of which rehearing is sought, we pointed out that we have stricken the invalid Kansas order from our files, in accordance with judicial instructions. We further pointed out that litigation is pending in the United States District Court in Kansas respecting the controversy between Socony Mobil and Cities Service arising from the invalidation of the Kansas order. Accordingly, we held that it is neither necessary or appropriate for the Commission, at least at this time, to undertake to determine the rate for this sale. These reasons are still sound and we adhere to this decision.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed herein on December 20, 1960, by Socony Mobil Oil Company, Inc., set forth no new facts or principles of law which were not fully considered by the Commission when it issued its order of November 22, 1960, or which, having now been considered, warrant any change in or modification of the said order.

The Commission orders:

The application for rehearing of the Commission's order issued November 22, 1960, filed herein by Socony Mobil Oil Company, Inc., on December 20, 1960, is hereby denied.

By the Commission.

/s/ J. H. Gutride
Joseph H. Gutride,
Secretary.

APPENDIX D

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck and Arthur Kline.

	DOCKET NOS.
Cities Service Gas Company Western Natural Gas Company	G-18799
v.	G-14958
Cities Service Gas Company	

ORDER DENYING PETITION FOR LEAVE TO INTERVENE AND DENYING MOTION TO CONSOLIDATE PROCEEDINGS

(Issued February 9, 1961)

On January 18, 1961, Western Natural Gas Company (Western) filed a petition for leave to intervene in Docket No. G-18799, and a motion to consolidate for hearing the proceedings in Docket Nos. G-18799 and G-14958. The proceeding in Docket No. G-18799 concerns the lawfulness of increased rates for jurisdictional sales of natural gas by Cities Service Gas Company (Cities Service) and was initiated by the Commission's order of June 19, 1959, suspending such proposed increased rates and providing for a hearing thereon. Docket No. G-14958 arose from a complaint filed by Western alleging failure of Cities Service to pay Western for gas purchased at the rate alleged by Western to be the lawful filed rate. This controversy arose as a result of the action of the Supreme Court of the United States in invalidating state minimum price orders with respect to sales of natural gas. *Cities Service Gas Company v. State Corporation Commission of Kansas*, 355 U.S. 391. Cities Service has instituted litigation in the Supreme Court

of the State of Delaware for refund by Western of the difference between the contract price and the rate resulting from the state minimum price order. This litigation has not been concluded.

Answers and objections to Western's aforesaid petition and motion were filed by Cities Service on January 31, 1961, and by the Municipal Group for Opposing Increase in Natural Gas Rates, on January 27, 1961.

In support of its petition to intervene in Docket No. G-18799, Western cites its controversy with Cities Service concerning the proper rate for the gas sales by Western to Cities Service and asserts that it has an interest which may be involved in the proceeding which cannot be adequately represented by any other party to the proceeding. In view of the fact that Western is neither a resale customer of Cities Service nor a consumer of gas sold by Cities Service, it does not appear that Western has an interest in the proceeding in Docket No. G-18799 which would warrant its participation therein. Accordingly, its petition for intervention should be denied.

Since litigation is now pending between the parties concerning the lawful rate for the sale and purchase of gas, it is neither necessary, appropriate, nor in the public interest for the Commission, at this time, to undertake to determine the rates for these sales, and the motion for consolidation of the said proceedings should be denied.

The Commission orders:

Western's petition for leave to intervene in Docket No. G-18799 and its motion to consolidate the proceedings involved in Docket Nos. G-18799 and G-14958, filed with the Commission on January 18, 1961, are hereby denied.

By the Commission.

/s/ J. H. Gutride
Joseph H. Gutride,
Secretary.

APPENDIX E

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, Arthur Kline and Paul A. Sweeney.

	DOCKET NOS.
Cities Service Gas Company	G-2410
	G-9468
Socony Mobil Oil Company, Inc.	G-16717

ORDER ACCEPTING OFFER OF SETTLEMENT, GRANTING MOTION TO DISCHARGE FROM REFUND OBLIGATIONS, AND ACCEPTING RATE SCHEDULE SUPPLEMENTS FOR FILING

(Issued February 28, 1961)

On January 18, 1961, Socony Mobil Oil Company, Inc. (Socony), submitted an offer of settlement in Docket No. G-16717, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. On the same date, Cities Service Gas Company (Cities Service) filed a corollary motion requesting that it be discharged from certain of its refunding obligations in Docket Nos. G-2410 and G-9468.

The proceeding in Docket No. G-16717 was instituted upon a petition by Socony, requesting a hearing to determine its effective rate as of June 7, 1954, for the sale of gas to Cities Service from the Hugoton Field, Kansas. The sale is made under Socony's FPC Gas Rate Schedule No. 3.

On February 19, 1957, Socony tendered for filing, as its rate schedule for the subject sale, a gas sales contract dated June 17, 1946. The contract provided for a price of 6¢ per Mcf at 16.4 psia until June 1961, and an adjustment of price

thereafter by agreement or arbitration. Concurrently Socony tendered for filing as supplements to the rate schedule certain agreements, letters, etc., including an interim order of the State Corporation Commission of Kansas, of February 18, 1949, prescribing a minimum price at the wellhead for Kansas Hugoton gas of 8.0¢ per Mcf (16.4 psia); an order of May 20, 1953, providing for a State standard base for measurement at 14.65 psia; and an order issued December 2, 1953, providing for a minimum price of 11.0¢ per Mcf (14.65 psia) for gas at the wellhead in the Hugoton Field. This latter order was designated as Supplement No. 26 to the subject rate schedule. By Commission orders issued March 21, 1957, and May 17, 1957, the base rate schedule and supplements thereto were accepted for filing.

Judicial review of the two Kansas Minimum Price Orders and the Commission's acceptance of Supplement No. 26 produced the following results:

1. The 8¢ per Mcf minimum price order was upheld by the Supreme Court of the State of Kansas (*Kansas-Nebraska Natural Gas Company* v. *State Corporation Commission*, 169 Kansas 722, 222 P.2d 704, rehearing denied 225 P.2d 1054).[1]

2. The 11¢ per Mcf minimum price order was held invalid by the United States Supreme Court (*Cities Service Gas Company v. State Corporation Commission of Kansas*, 355 U.S. 391).

3. The Commission struck from its files Supplement No. 26 and returned it to Socony, in compliance with a mandate from the court (*Cities Service Gas Company* v. *F.P.C.*, 255 F.2d 860, cert. den. 358 U.S. 837).

In addition to the above court actions, Cities Service instituted suit against Socony in the United States District Court for the District of Kansas, in Case No. W-1095, seek-

[1] This decision was not appealed to the United States Supreme Court.

ing recovery of the difference between 11¢ per Mcf at 14.65 psia (the Kansas 11¢ minimum price which Cities Service had paid under protest) and 6¢ per Mcf at 16.4 psia (the price set out in the original contract for the subject sale) for the period of time from January 1, 1954, and continuing down to the date of disposition of such litigation. In this litigation, Socony has denied any indebtedness to Cities Service for this sale and has filed counterclaims against Cities Service. As part of its defense, Socony has asserted that Cities Service, through its conduct, action, acquiescence, estoppel, and payments, has amended the terms of the price provisions of the contract to a price no lower than 8¢ per Mcf at 16.4 psia. On January 10, 1961, the court rendered its decision and made the following finding:

> The Court, based on the evidence and upon the agreement and stipulation of the parties, finds that the legally effective rate between the parties for such gas from and after January 1, 1954 and as of the date of this judgement, is 7.5¢ per Mcf (16.4 psia).

On January 25, 1961, Socony tendered the aforementioned court order to establish the June 7, 1954 rate as 7.5¢ per Mcf at 16.4 psia for the subject sale, which has been designated as Supplement No. 29 to Socony's FPC Gas Rate Schedule No. 3.

On January 13, 1961, Socony tendered for filing a proposed rate increase to 11.0¢ per Mcf at 14.65 psia for the subject sale, which has been designated as Supplement No. 30 to the aforementioned rate schedule. Socony, in this rate increase filing, has requested that the filing date of such increase be considered the date the Commission approves Socony's offer of settlement and Cities Service's corollary motion. Socony further requests waiver of the thirty days' notice requirement and states that the sub-

mittal of the rate increase proposal is contingent upon the Commission's approval of its offer of settlement.

In its motion, Cities Service requests the Commission to discharge it from certain obligations under the settlement order issued May 25, 1956, in Docket Nos. G-2410 and G-9468 (15 F.P.C. 1448), on the basis of the finding in the above-mentioned judgement of the United States District Court for the District of Kansas. By the settlement order the Commission recognized the possibility of further refunds to Cities Service if the minimum price orders were invalidated and, in such eventuality, required refund of the difference between the contract price and the amount paid under minimum price orders. The proposed motion and settlement cover overpayments made by Cities Service to Socony, for gas purchased during the period January 1, 1954, through November 22, 1960. During that period, the difference between the 11.0¢ per Mcf rate paid and the 6.0¢ per Mcf contract price for gas purchased amounted to $7,055,729. On the basis of the court's judgement, Cities Service would receive a refund of $5,434,447, $3,975,037 of which would be applicable to the period of time covered by Docket Nos. G-2410 and G-9468. Cities Service proposes to distribute to the persons entitled thereto the portion of the $3,975,037 applicable to jurisdictional sales as provided in the settlement order and as satisfaction of its refund obligation insofar as it applies to purchases from Socony.[2]

In the offer of settlement and corollary motion thereto, Socony and Cities Service request that:

(1) The Commission accept the rate of 7.5¢ per Mcf at 16.4 psia, as set forth in Supplement No. 29 to Socony's

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[2] Refunds covering a period of time when new increased rates became effective would be retained for distribution in pending Docket No. G-18799.

PC Gas Rate Schedule No. 3, for the period from June 7, 954, to date;

(2) The rate increase filed by Socony, contained in Supplement No. 30 to the aforementioned rate schedule ncreasing the rate for the subject sale of gas to 11.0¢ per Mcf at 14.65 psia, be effective prospectively; and

(3) Cities Service be discharged from certain of its efund obligations in Docket Nos. G-2410 and G-9468.

Both the settlement agreement and the corollary motion hereto, are contingent upon the Commission's acceptance of each of the above requests.

Substantially all of Cities Service's jurisdictional customers entitled to share in the resulting refund from Socony have consented to the settlement agreement. No one has expressed any opposition to the settlement agreement or the corollary motion filed in these proceedings.

In support of their requests, Socony and Cities Service allege that it is in the public interest, and in the interest of the parties and of the ultimate consumer affected thereby, that their respective requests be accepted by the Commission. They further allege that extensive and lengthy litigation will thus be avoided, and the rights of the various parties will be settled concurrently.

In the judgement of the Commission the proposed settlement is desirable in the public interest and is appropriate to carry out the provisions of the Natural Gas Act. Acceptance of the 7.5¢ per Mcf at 16.4 psia rate, effective as of June 7, 1954, is equitable to all concerned and will prevent any further and extensive litigation in the courts and in the Commission on this issue, the result of which is uncertain by reason of the claim that Cities Service had agreed to, or was estopped to deny, an effective rate of 8¢ per Mcf. The acceptance of the proposed increased rate contained in Supplement No. 30 to Socony's FPC Gas Rate

Schedule No. 3 is in accordance with our Statement of General Policy No. 61-1, issued September 28, 1960, and good cause exists for waiving the 30 days' notice requirement relative to the aforesaid Supplement No. 30.

The Commission finds:

Acceptance of the proposed settlement and the corollary motion filed by Socony and Cities Service with the Commission on January 18, 1961, as hereinafter ordered, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act.

The Commission orders:

(A) The offer of settlement filed by Socony and the corollary motion filed by Cities Service with the Commission on January 18, 1961, are hereby approved in accordance with the provisions of this order.

(B) Supplement No. 29 to Socony's FPC Gas Rate Schedule No. 3, containing the rate of 7.5¢ per Mcf at 164 psia, is hereby accepted for filing effective as of June 7, 1954, for the subject sale of gas.

(C) The proceeding in Docket No. G-16717 is hereby terminated.

(D) Supplement No. 30 to Socony's FPC Gas Rate Schedule No. 3 is hereby accepted for filing. The 30 days' notice requirement provided in the Commission's Regulations under the Natural Gas Act is hereby waived with respect to the aforesaid Supplement No. 30, which supplement is allowed to become effective as of the date of issuance of this order.

(E) Cities Service shall refund, within 30 days after the date of issuance of this order, to the persons entitled thereto the portion of the amount of $3,975,037 applicable to jurisdictional sales as provided in the Commission's order

May 25, 1956, in Docket Nos. G-2410 and G-9468. Cities Service, within 45 days after the date of issuance of this order, shall report to the Commission, in writing and under oath, the details of its calculations upon which it based its refunds made pursuant to this paragraph together with copies of releases from its customers with respect to such refund.

(F) Upon compliance with paragraph (E) hereof, Cities Service shall be discharged from its refunding obligations in Docket Nos. G-2410 and G-9468 with respect to its purchases of gas under Socony's FPC Gas Rate Schedule No. 3.

(G) This order is without prejudice to any action the Commission may take or has taken in other cases involving the invalidated Kansas Minimum Price Order or the invalidated Kansas Severance Tax.

By the Commission.

/s/ J. H. Gutride
Joseph H. Gutride,
Secretary.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 80

PAN AMERICAN PETROLEUM CORPORATION, *Petitioner*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE sitting as a Judge of That Court, and CITIES SERVICE GAS COMPANY, *Respondents*.

No. 81

TEXACO, INC., *Petitioner*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE sitting as a Judge of That Court, *Respondents*, and CITIES SERVICE GAS COMPANY, *Intervening Respondent*.

On Writ of Certiorari to the Supreme Court of Delaware

Petitioners' Answer to Motions of Atchison, Kansas, et al., and Colorado Interstate Gas Company for Leave to File Briefs Amici Curiae in Support of Respondents

As answer to Motions for Leave to File Briefs *Amici Curiae* in Support of Respondents, Petitioners submit:

1. Atchison, Kansas, *et al.*, (the municipalities) have filed their Motion "out of an abundance of caution" (Mun. Motion, p. 2). Petitioners declined consent to their filing a Brief *Amici Curiae*, but assume that as political sub-

divisions of the states of Kansas and Missouri, the municipalities will be permitted to proceed under Rule 42(4). Appended hereto is Petitioners' reply to the municipalities' Brief.

2. Petitioners did not consent to the filing of a Brief *Amicus Curiae* by Colorado Interstate Gas Company (Colorado). Colorado's Motion does not set forth matters which materially distinguish an argument by Colorado on the jurisdictional questions at issue, from argument of Cities Service Gas Company (Cities), a named respondent. Colorado discusses rate relationships between it and its customers controlled by orders under the Natural Gas Act. Colorado further discusses rate relationships between Colorado and its suppliers which are also subject to Federal Power Commission orders and Sections 4 and 19 of the Act. These matters are not of record here, but could be properly disposed of in actions under Section 22 of the Act. (*Cf.*, Colo. Motion, p. 3). Colorado's rights and status obviously depend upon its own proper pursuit of administrative remedies and statutory procedures. The effect thereon of a decision upon jurisdictional questions here raised by activities of the Delaware courts, thus must depend upon facts of record in Colorado's collateral proceedings.

3. In large measure, Colorado's Brief closely parallels that of Cities. Differences apparently are the result of Colorado's unfamiliarity with the factual background during the period from 1954 to the present, and with development of Commission regulation of producers' rates since June 7, 1954. Upon such a predicate, where Colorado departs from Cities' arguments, it is to urge a possibly wider area of "concurrent" state and federal jurisdiction over a regulated rate. Petitioners have appended hereto necessary references to correct Colorado's predicate, and their demonstration of the errors of Colorado's contentions.

For the foregoing reasons, it is respectfully submitted that the Motion for Leave to File Brief by Colorado Interstate Gas Company should be denied.

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April, 1961

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 80

PAN AMERICAN PETROLEUM CORPORATION, *Petitioner*,

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THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE sitting as a Judge of That Court, and CITIES SERVICE GAS COMPANY, *Respondents*.

No. 81

TEXACO, INC., *Petitioner*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE sitting as a Judge of That Court, *Respondents*, and CITIES SERVICE GAS COMPANY, *Intervening Respondent*.

On Writ of Certiorari to the Supreme Court of Delaware

Petitioners' Reply to Briefs of Atchison, Kansas, et al., and Colorado Interstate Gas Company, as Amici Curiae in Support of Respondents

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INTRODUCTORY STATEMENT

Briefs of the *Amici Curiae* echo that of Respondent Cities Service Gas Company (Cities). Petitioners have filed replies to Cities and respectfully refer thereto for dis-

cussion of arguments of the *Amici Curiae* which repeat Cities' contentions.

The municipalities' purpose apparently is to support implications that Cities' theories are consistent with purposes of the Natural Gas Act, while Petitioners' are not. Actually, Petitioners' position accords with acts of the Federal Power Commission affecting consumer interests, while Cities' theories render Commission procedures and statutory provisions nugatory. Much of the municipalities' argument thus rests upon assumption that the rate relationship between Petitioners and Cities is not now completely subject to paramount federal control. However, the effective 11 cent rate level not only is controlled by the Act, but has been recognized as consistent with consumer interests by the Commission in the exercise of its primary jurisdiction over Petitioners' rate.

Colorado Interstate Gas Company (Colorado) primarily urges that a producer "natural-gas company's" rate may be concurrently controlled by alleged "common-law" rights enforceable in courts of general jurisdiction. Such a theory is not only inconsistent with the Act's exclusive jurisdiction provisions, but also would mean that practical control of the rate would evolve into state courts and, as Colorado suggests, the federal courts under diversity jurisdiction.

I. REPLY TO THE MUNICIPALITIES AS AMICI CURIAE

A. The rate relationship between the municipalities and Cities, controlled by the Act, is subject to Cities' compliance with statutory conditions precedent

Like Cities, the municipalities refer to a Commission order in FPC Docket No. G-2410 which is said to reserve to Cities' "jurisdictional" customers contingent rights against Cities (Mun. Motion, pp. 2, 5; Mun. Br., pp. 2, 3, 6, 13, 17, and 18).

That order was issued in a Section 4 proceeding involv-

ing Cities' rates.[1] Petitioners' own rates under Section 4 were not in issue in that proceeding and were not there determined. Petitioners are not named in the Commission order, nor has either ever been "one of the companies" referred to by general statements in that order (R. 556-586). That order thus may well vest some contingent rights against Cities, but Cities' rights insofar as Petitioners and their effective rate are concerned, were not determined by that order. Each producer who sells to

[1] Only what is termed a "refund order" is of record here. Source of figures is not revealed. Apparently the figures are derived outside this record by subtracting substantial amounts Cities would retain because "non-jurisdictional" customers would not have "refund rights" under a Commission order. Significantly, Cities has not expressed agreement here with percentages the municipalities may have used. It may be noted, however, that calculations and actual purposes of the Kansas municipalities here on Cities' behalf are particularly unclear in the light of the statutes. In this respect, the Kansas Corporation Commission has already stated in other contexts that *if* "refunds" of the type the municipalities refer to, actually ever occurred, *after* compliance with all statutes involved, approximately 80% would be "windfalls" to pipelines such as Cities, and only 20% could ever reach distribution companies. Of this latter amount, the Kansas Commission stated:

> "'. . . we believe we have no jurisdiction to compel refunds to consumers by distributing companies and any refunds by Cities Service Gas to Kansas distributors will simply be a windfall to the distributing companies without any benefit whatever to the consumer. We think it likely the other state regulatory bodies may be similarly circumstanced.'"

(Petition for Writ of Certiorari to the Supreme Court of Kansas, State Corporation Commission of Kansas, *et al.* v. Cities Service Gas Company, No. 302, Oct. Term 1959, pp. 12-13). See also this Court's reference to such questions in *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951), noting a statement that if a distributing company "recoups again what it has already recouped from the public, there is no machinery in or out of court by which others who have paid unreasonable charges to it can recover." (341 U.S. at 254).

Cities and who is a "natural-gas company" under the Act has its own separate, effective rate under Section 4. Applicability of any provisions of the order to which the municipalities refer thus is always dependent upon the legal relationship between such a regulated producer and Cities, as determined by Commission action under Section 4 upon that producer's rate.

The Commission order and any contingent rate relationship between the municipalities and Cities have not authorized either Cities, Petitioners, or the municipalities to attempt enforcement of rights or liabilities outside the framework of the Act. The municipalities themselves rely upon Commission orders under Section 4 as defining and creating contingent rights against Cities. The order to which they refer thus is subject to all conditions precedent and jurisdictional strictures of the Act, and at no time has the Commission authorized, encouraged, or indicated approval of state court intrusion into the federal regulatory process.

Operation of an order of the type issued in Docket No. G-2410 is illustrated by the Socony-Mobil Oil Company, Inc. (formerly Magnolia Petroleum Company) orders set forth in Appendices by the municipalities and Cities. There, Cities proceeded first through the administrative process, then into the Court of Appeals under Section 19(b), and finally to a judgment in the United States District Court for the District of Kansas. (See Mun. Br., App. A and B; Cities Br., App. E). Thereafter, the Commission entered the order in Appendix E to Cities' Brief, recognizing that statutory conditions precedent had been met and statutory procedures followed, and entering further orders consistent with the order in Docket No. G-2410.

Here, by contrast, none of these conditions precedent has been met, and the facts are to the contrary. The municipalities did not proceed under the Act. For its own rea-

sons, Cities also did not proceed before the Commission, has not proceeded into the Courts of Appeals, and has not proceeded under Section 22 of the Act. Cities merely seeks to bypass all of these procedures by litigation over a completely regulated rate relationship in the state courts. Accordingly, no matter what contingent rights the municipalities may have against Cities, it is clear that the municipalities must have misinterpreted Commission orders and the nature of the relationship between Petitioners and Cities, as "natural-gas companies" under the Act.

"Consumer interests" to which the municipalities refer also are subject to jurisdiction and orders of the Kansas Corporation Commission and the Missouri Public Service Commission, but only after Cities itself properly complied with the Act. Whether those authorities would, or can, rule that Cities and regulated distribution companies must, or even legally could, further make "refunds" to ultimate consumers, depends upon statutory provisions and regulatory controls of such state bodies. This record does not include such facts or authorities on these questions. They also are not revealed by the municipalities.[2] Accordingly, it cannot be assumed here that results discussed by the municipalities could actually obtain, or have obtained, if a dispute between Cities and a regulated supplier has been resolved, or is resolved, in a proper forum.

Cities' customers thus may have some enforceable contingent rights against Cities, or valid grounds for attacking Cities' rates. However, none of these matters is at issue here; each must be resolved under the statute applicable; and none is controlling upon questions actually at issue at this juncture.

[2] See footnote 1, *supra*.

B. The rate relationship between Cities and Petitioners is governed exclusively by the Act

Since Cities and Petitioners are all "natural-gas companies," their respective rates are regulated under Section 4. However, the municipalities apparently do not recognize the inconsistency between their total reliance here upon Commission orders as to their own relationship with Cities, and their argument that the relationship between Cities and Petitioners is controlled by concepts of "common-law," or "general law," and that a state court has jurisdiction.

The municipalities' argument appears predicated upon an assumption that under Section 4, control of the rate relationship between a producer and a pipeline company has not changed since *Phillips Petroleum Co.* v. *State of Wisconsin*, 347 U.S. 672 (1954). Obviously, since June 7, 1954, the rates of any producer subject to the Commission's jurisdiction fall within the paramount scope of the Act, and *once* a rate is effective under Section 4 that rate controls rights and liabilities.

Nevertheless, the municipalities mistakenly state:

> "It [the Act] has no application to cases where the action is a common-law one arising out of an initial rate established by contract alone with respect to which there has been no action of the Commission under Section 5(a) of the Act." (Mun. Br., p. 4)

And further argue:

> ". . . the exclusive jurisdiction provision of Section 22, cannot be interpreted to preclude state courts from exercising jurisdiction over actions arising out of contracts unimpaired by the Act, but merely filed with the Commission, where as in these cases, there has been no exercise by the Commission of its powers to review the reasonableness of such rates under Section 5(a)." (Mun. Br., p. 10)

And then conclude:

> "Nothing the Commission does with respect to an initial rate filing can have any effect on the rates fixed by the contract filed." (Mun. Br., p. 11)

This, of course, tears Section 4, as well as Section 19, out of the statute.

Since the opening of the 1954 proceeding governing Cities' rates in which at least one or more of these municipalities apparently participated, the Commission has issued the extensive Regulations governing producers' filings under Section 4. If the municipalities were correct here, however, not one of the thousands of Commission actions under Section 4 since June 7, 1954, has binding effect. If that were so, all of the litigation over Commission acts under Section 4 determining the effective rate level in cents-per-Mcf, also should never have proceeded into the federal Courts of Appeals, because jurisdiction over such controversies was still in the state courts.[3]

Obviously, the municipalities are incorrect. The federal Courts of Appeals have been correct as to their juris-

[3] *E.g., Magnolia Petroleum Company* v. *Federal Power Commission*, 236 F. 2d 785 (5th Cir. 1956), *cert. den.*, 352 U.S. 969 (1957); *Bel Oil Corp.* v. *Federal Power Commission*, 255 F. 2d 548 (5th Cir. 1958), *cert. den.*, 358 U.S. 804 (1958); *Cities Service Gas Producing Co.* v. *Federal Power Commission*, 233 F. 2d 726 (10th Cir. 1956), *cert. den.*, 352 U.S. 911 (1956); *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F. 2d 860 (10th Cir. 1958), *cert. den.*, 358 U.S. 837 (1958); *Continental Oil Co.* v. *Federal Power Commission*, 236 F. 2d 839 (5th Cir. 1956); *Episcopal Theological Seminary, et al.* v. *Federal Power Commission*, 269 F. 2d 228 (D.C. Cir. 1959), *cert. den.*, 361 U.S. 895 (1959); *Federal Power Commission* v. *Union Producing Co.*, 230 F. 2d 36 (D.C. Cir. 1956); *Kerr-McGee Oil Industries, Inc.* v. *Federal Power Commission*, 260 F. 2d 602 (10th Cir. 1958); *Natural Gas Pipe Line Co. of America* v. *Federal Power Commission*, 253 F. 2d 3 (3rd Cir. 1958), *cert. den.*, 357 U.S. 927 (1958); *Phillips Petroleum Co.* v. *Federal Power Commission*, 227 F. 2d 470 (10th Cir. 1955); *Phillips Petroleum Co.* v. *Federal Power Commission*, 258 F. 2d 906 (10th Cir. 1958); *Signal Oil and Gas Co.* v. *Federal Power Commission*, 238 F. 2d 771 (3rd Cir. 1956); *Sunray-Mid-Continent Oil Co.* v. *Federal Power Commission*, 270 F. 2d 404 (10th Cir. 1959); *Warren Petroleum Corp.* v. *Federal Power Commission*, 282 F. 2d 312 (10th Cir. 1960).

diction under Section 19(b), and as to the binding effect of Commission actions since June 7, 1954 under Section 4—such as appear in this record. The municipalities thus mistakenly assume that bars to state court jurisdiction preclude protection of consumers, or alleged contingent rights. This, of course, is incorrect since Section 22 also applies.

In response to Cities and in Main Briefs, Petitioners have made references to the record of Cities' shifts and interjection below of the question of the legal rates under the Act; have demonstrated the nature of the subject matter actually before the state court; have discussed Cities' citations repeated now by the municipalities; and have shown that it is Petitioners' position—not that of Cities—which is consistent with the "rationale of Mobile, Memphis and CATCO." (See Pan American Main Br., pp. 25-47, 51-57). These are the only constructions of Sections 4, 19, and 22 compatible with the *Mobile* holding and with jurisdictional proscriptions of the Act. It is only by adherence thereto that federal regulation of the rate—the matter of concern to consumers—can exist.[4]

The municipalities thus summarize the state court's action in terms reflecting a state court's intrusion upon Sections 4, 19 and 22:

> "It [the state court] merely determined that subsequent to this court's invalidation of the Kansas Minimum Price Order, the filed rates protected by *Montana-Dakota* were the contract rates filed with the Commission unchanged by the void Kansas Minimum Price Order, which contract rates under *Mobile* could not be varied by any act of the Commission except by modification after a hearing and finding of unlawfulness under Section 5(a)." (Mun. Br., p. 16)

[4] For example, Docket No. G-2410, in which the order affecting Cities' rates was issued, was originally instituted *under Section 4* (R. 556, 557), but see Mun. Br., p. 4 and pp. 10-11, quoted *supra*.

Petitioners have shown that such actions and their "enforcement" by a state court totally nullify Commission jurisdiction under Section 4, exclusive review provisions of Section 19, and Section 22. Petitioners' own rates like Cities' rates, are subject only to the regulatory strictures of the Act. Neither Cities nor the municipalities have received authorization—nor could they—from the Commission for proceeding outside the framework of the Act in state courts.

C. The 11 cents-per-Mcf rate level has been recognized as consistent with consumer interests

Apparently, the municipalities have also unknowingly placed themselves in the questionable position of first having long reaped the benefits of the 11 cents rate—found by two regulatory commissions to be in the public interest—and then joining in belated attacks here.

No regulated company disputes the primary purpose of the Act. "Reasonable" rates are required. Petitioners, however, like any regulated company, at the same time are granted a means of rate stability, and are accorded processes of the Act for protection of rights and determination of liabilities. Yet, the municipalities here use language of castigation—"brazen," "windfall," "illegal," and so on—presumably to create an aura of "exploitation," but the adjectives are improper.

As to history, the old Kansas order was designed to protect consumer interests, to encourage drilling and sales of gas to pipelines reselling for use by ultimate consumers, and to discourage waste and inferior uses of gas produced in the Hugoton Field. These were the purposes of the Kansas Commission when it initially determined that an 11 cents price was required and in the public interest. In part, the Kansas Commission also was required to act because of adverse effects of monopolistic power of a few pipeline companies—including Cities. These matters

are the subject of extensive public records, including Federal Power Commission Report to Congress, 1948, (Olds-Draper Report, p. 10; Smith-Wimberly Report, pp. 9, 232), *Kansas-Nebraska Natural Gas Co. v. State Corporation Commission*, 169 Kan. 722, 733, 222 P. 2d 704, 713.

More recently, the Federal Power Commission has recognized that a rate of 11 cents-per-Mcf is acceptable, in the public interest, and consistent with consumer protection, for sales in Kansas under rate schedules already on file. That Commission has further recognized that a rate of 16 cents-per-Mcf is required by the public convenience and necessity for new sales, and to maintain adequate supplies in the State of Kansas. See FPC Statement of Policy No. 61-1, 25 Fed. Reg. 9578-9579 (Oct. 5, 1960).

The municipalities cannot be unaware of Cities' conduct from 1954 through 1958. From that conduct any reasonable person, and apparently the Federal Power Commission itself, could but conclude that producers' rates of 11 cents-per-Mcf on file and effective under the Act, were stable, unquestioned, and accorded statutory finality. Correctly assuming that certainty had been achieved and that a stable rate relationship existed, Petitioners and many other producers went forward during these years with substantial investments in the Hugoton Field, with development of acreage, and with all of the activities necessary to bring forth increased gas supplies. These municipalities, as customers of Cities, have, of course, long received and consumed such supplies, and reaped the benefits of the acts of the two regulatory bodies which will now continue far into the future. In a proper forum, Petitioners have always been prepared to submit these facts, and to catalog Cities' course of conduct from 1954 until it suddenly launched collateral attacks in 1958. Here, the municipalities, nevertheless, join in attack upon a rate which Cities did not protest in a timely manner. The joinder is wholly

misplaced, actually contrary to short- or long-term consumer interest in preserving statutory procedures, and differs from conclusions of two regulatory bodies having primary jurisdiction over protection of consumer interests.

Petitioners do not dispute the municipalities' belief that they may have some contingent rights against Cities in any situations where Cities itself has properly complied with statutory conditions precedent inherent in an order of the type the municipalities mention so frequently. However, these matters are not germane at this juncture, and an attack upon the 11 cents-per-Mcf rate level as contrary to "consumer protection" is inappropriate as well as without foundation. The municipalities thus argue from the very apparent assumption that a producer's rates remain subject only to control by private "agreement" with Cities. This flows from basic misunderstanding of Commission actions under Section 4, and highlights the similar erroneous premise of the Delaware state courts.

II. REPLY TO COLORADO INTERSTATE GAS COMPANY AS AMICUS CURIAE

Colorado seems to argue primarily for a "concurrent" state and federal law "source" and fora for control of the regulated rate. Thus, Colorado says ". . . where the same circumstances give rise to both common law and federal rights, the choice of which set of rights to assert . . . rests exclusively with the plaintiff . . ." (Colo. Br., p. 11); and, further, that despite "paramount power" of the Commission, "a contract remains binding and enforceable upon the parties as a contract." (Colo. Br., p. 17).

Like the municipalities, Colorado thus errs by reading the *Mobile* case as having written binding effect of Section 4 and Commission actions thereunder completely out of the Act.

A. Alleged ancillary "agreements" cannot control a regulated rate

Insofar as history of this controversy is concerned, Colorado is completely in error as to factual or legal existence of ancillary written or implied "agreements" which Cities began to discuss only in 1958. Petitioners have discussed this point in response to Cities, and are prepared to so demonstrate in a proper forum. (See also R. 620-635).

Colorado also has ignored the record as to all of Cities' allegations below, its position there, and the ultiinate revelation of the actual subject matter (R. 619-620, 278-281, 282-554, 589-607, 764, 766, 767, 768, 770, 771, 775, 777-778). Contrary to Colorado's reconstruction of what occurred, the trial court thus concluded ". . . both parties agreed that as to the period after July 16, 1954, at least no rate may be asserted as a legal right that is other than the filed rate" (R. 8, 12-13). Nevertheless, Colorado, like Cities, still attacks the control and disputes the binding legal effect of Commission procedures set up to regulate producers' rates under Section 4 (Colo. Br., pp. 19-38).

Most, if not all, of Colorado's argument collapses when one controlling point is kept in mind: as the trial court recognized, the rate on file under Section 4 is the only "legal rate." That rate defines in cents-per-Mcf, at any point in time, the only "rate" that "may be asserted as a legal right." While it is correct that *prior* to filing, parties may contract and agree as to a rate, the right to charge, the obligation to pay, and binding legal effect depend exclusively upon *subsequent* tender, acceptance, and effectiveness through the processes of, and Commission action under, Section 4. It is the Act which pin-points the legal rate in cents-per-Mcf, regardless of antecedent agreement or documents tendered. This results in inevitable legal consequences in the exclusive jurisdictional fora established by Sections 4, 19, and 22.

The "legal rate" thus may be different from what one party or another thought the rate should have been or should be—the Commission may have read the documents differently, or erred in the view of buyer or seller. However, this cannot change the binding effect of the rate under Section 4 as the only legal source of the rate and rights and liabilities of either party. The exclusive procedures for review and enforcement under the Act still apply. These procedures do not turn upon a "source" of an *antecedent* relationship that does not and cannot fix the "legal rate," nor do they turn upon afterthoughts or actions in a state court. The Act is not unique in resting upon this system of permissible, initial private agreements, *but* in which the actual rate relationship is dependent solely upon federal law for effectiveness, "source" of rights, and exclusive control of legal consequences *after* the statutory process touches a permissible private agreement. Compare *Railway Employes' Department* v. *Hanson*, 351 U.S. 225, 230-233 (1956); *Local 24 of International Brotherhood of Teamsters, etc.* v. *Oliver*, 358 U.S. 283, 292-294, 296-298 (1959).

Mobile is compatible with these statutory processes, but Colorado also does not reach the question of legal rate and exclusive federal source of rights and liabilities *after* filing under Section 4 and Commission action under that section.

B. Concepts discussed by Colorado do not apply where the subject matter is an exclusively regulated rate

Colorado first discusses "historical perspective," but ends only with conclusions that (1) state court intrusion is "permissible" after reference solely to an initial complaint (Colo. Br., p. 10), and (2) the Act permits a plaintiff an option of a "choice of rights" with respect to a regulated rate, enforceable in state or federal courts of general and diversity jurisdiction (Colo. Br., p. 11).

Petitioners do not dispute historical development of the "federal question" rule (Colo. Br., p. 10), but have pointed

out in response to Cities that this is not the test of *state* jurisdiction over this subject matter, and is not controlling in these circumstances in construction of the "exclusive jurisdiction" provision of Section 22.

Distinctions are illustrated by Colorado's misplaced reliance upon *Skelly Oil Co., et al.* v. *Phillips Petroleum Co.*, 339 U.S. 667 (1950) (Colo. Br., pp. 5, 7, 8, 9, 10). The question at issue in *Skelly* was enforcement of contracts which were *not* on file with the Commission, and over which the Commission had exercised no jurisdiction. The dispute was not over a rate; the subject matter of rate was never involved; nor was the effect of Section 4 of the Act at issue. The entire transaction between the parties was conducted exclusively outside the framework of the Act, and a question of Commission acts arose solely because contract cancellation became involved with timing of Commission issuance of a Section 7 certificate to *another* person *not* a party to the case nor to any of the contracts actually in dispute (*Cf.* R. 8, 12-13).

Here, there is no factual or legal similarity. Neither a private agreement, nor a rate, can have binding legal effect as such. Legal rate and rights are controlled by the effective rate on file, and that rate depends solely upon Commission action under Section 4. The subject matter is wholly and completely controlled under Section 4, both as to rate *level* in cents-per-Mcf and as to periods of *time* in which any rate may be charged by a seller and paid by a buyer. Here, that rate relationship is the only issue, and the overriding, paramount authority of the Act and orders thereunder supersede any pre-existent relationship under state or federal law. *Cf.* Colorado's argument and *Adams Express Co.* v. *Croninger*, 226 U.S. 491 (1913); *Southern Railway Co.* v. *Prescott*, 240 U.S. 632 (1916).

As innumerable cases relating to producers' rates reflect, where a rate schedule is on file, the rate in effect in cents-per-Mcf is governed exclusively by acts, determinations,

later orders, and minutes of the Commission under Section 4. Those acts alone thereafter control both rate and rights of buyer and seller. Where a buyer or seller disagrees with such Commission actions under Section 4, the rate relationship can be changed only by overturning Commission actions by review under Section 19(b), or by subsequent tender of a new rate under Section 4. (See cases cited, Pan American Main Br., pp. 25-47).

However, Colorado refers to situations in which the day-to-day rate or price relationship between two private parties is not exclusively controlled by a comprehensive federal regulatory system (Colo. Br., pp. 8-10, 12-13).[*] For example, Colorado refers to *Pratt* v. *Paris Light, Gas & Coke Co.*, 168 U.S. 255 (1897), as an action involving the purchase price of a patented machine. But Colorado does not recognize the legal and practical difference where the very rate at issue is the subject matter to which the federal regulatory power exclusively attaches; with which the regulatory power is primarily concerned and must exclusively control; and which can be changed only by careful and timely compliance with a step-by-step process through a federal agency and exclusive federal appellate review, and then exclusively enforced in the United States District Courts. *Cf. Weber* v. *Anheuser-Busch, Inc.*, 348 U.S. 468, 481 (1955).

Colorado thus ignores the distinctions in cases such as *Lambert Run & Coal Co.* v. *Baltimore & Ohio R. R. Co.*, 258 U.S. 377 (1922). A determination by a court which would actually result in adjudication of controlling "com-

[*] *Natural Gas Pipe Line Co. of America* v. *Harrington*, 246 F. 2d 915 (5th Cir. 1957), cited by Colorado at p. 11, involved a period of time when the rate relationship was not subject to Commission acts under Section 4, and a rate was not on file. The paramount authority of the Commission over the rate relationship was not there discussed in the context of circumstances such as exist today, and as are shown in this record.

non-law" or "equitable" rights is one thing. What is involved here are the wholly different circumstances where initial concealment of paramount federal pre-emption is quickly removed, and a state court must withdraw or trample upon federal pre-emptions (see Pan American Main Br., pp. 49-51, 55-56, and *Simpson* v. *Southwestern Railroad Co.*, 231 F. 2d 59 (5th Cir. 1956), *cert. den.*, 352 U.S. 828 (1956)).

Texas Gas Transmission Corp. v. *Shell Oil Co.*, 363 U.S. 263 (1960), relied upon by Colorado (Colo. Br., pp. 13, 16, 17, 21, 27), actually demonstrates that there is no "concurrent" court jurisdiction, *after* a rate is tendered for filing under Section 4. The dispute between buyer and seller in that case proceeded through Commission procedures under Section 4, into the Court of Appeals under Section 19(b), and thence into this Court on Writ of Certiorari. All of this was unnecessary, and none of these bodies had jurisdiction, if the act of the Commission under Section 4, in its conclusion as to which rate in cents-per-Mcf to accept for filing, did not thereafter fix, create, control or otherwise determine the rights and liabilities of buyer and seller, and the only rate that legally could be charged or paid for deliveries of gas in that transaction.

Under Colorado's theory, however, a separate collateral suit could have been maintained in a state court or under federal diversity jurisdiction for enforcement of views of buyer or seller. Or, under Colorado's theory, *when* that dispute *is* resolved under the Act, and a rate *is* accepted for filing under Section 4, the losing party could still relitigate its "common-law" claims in collateral actions outside the framework of the Act. Obviously, this is not permissible because federal law and the accepted rate control the parties' rights, but Colorado's theory would lead to such results (*Cf.* Colo. Br., pp. 17-18).

No producer has had the temerity—or misunderstanding of the Act, Regulations, and Commission authority—to

demand that any transmission company—such as Colorado—pay a "price" that may have been "agreed-upon" in a "private contract," which was actually different in cents-per-Mcf from the effective rate under Section 4. Producers bill and pipelines pay the cents-per-Mcf rate tendered under Section 4, accepted, filed, and made effective by Commission consideration of the tendered rate, its formal vote, its spreading of its action upon its minutes, and its issuance of letter orders such as appear in this record. The Commission's system of regulating a producer's rate, the legally effective rate level in cents-per-Mcf, and any changes of that exact level, all have rested exclusively upon these acts under federal law since 1954, and do today. Neither Colorado, nor Petitioners nor any other regulated company can, by collateral suit in a court of general jurisdiction, claim "right" to some other price and invoke a "concurrent" jurisdiction to override these acts.

C. Differences in form of pipelines' and producers' schedules do not change legal effect of effective rates under the Act

Colorado next tries to distinguish legal effect of Commission acceptance and filing a producer's rate from comparable control of a pipeline's rate (Colo. Br., pp. 15-18). The current difference in form of a producer's "rate schedules"—which may include contracts affecting a rate—and a pipeline company's "tariffs" or "rate schedules"—which also may include contracts and separate service agreements[6]—does not control Commission jurisdiction and duties under Section 4, or the resultant binding legal effect of the cents-per-Mcf rate level under Sections 4, 19, and 22.

[6] See "contracts" or "service agreements" discussed in *United Gas Pipe Line Co.* v. *Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *United Gas Pipe Line Co.* v. *Memphis Light, Gas and Water Division*, 358 U.S. 103 (1958).

For either producer or pipeline, the effective rate level, in cents-per-Mef, at all points in time, is dependent upon what the Commission does after either producer or a pipeline tenders to the Commission a rate for filing under Section 4. If the rate is suspended, it is not charged except after further Commission order under Section 4. If the rate is rejected, as frequently occurs, another rate must be tendered which is consistent with Commission reasons for rejecting the first tender. But, if the rate is accepted for filing, and made effective, it is the only legal rate, for either a producer or a pipeline, and the *Montana-Dakota* rule applies to either rate. See *Signal Oil and Gas Co.* v. *Federal Power Commission*, 238 F. 2d 771, 773 (3rd Cir. 1956).

Sunray Mid-Continent Oil Co. v. *Federal Power Commission*, 364 U.S. 137 (1960), actually is contrary to Colorado's argument. (See Colo. Br., pp. 5, 15, 16). That case involved term of a Section 7 certificate, and questions of the effective rate under Section 4 were not at issue. (*Cf. Sun Oil Co.* v. *Federal Power Commission*, 364 U.S. 170 (1960), wherein Commission jurisdiction, the Act, and the Regulations were recognized as precluding a collateral change of cents-per-Mef rate level, even though the new higher rate had been agreed-upon in a private agreement.) In *Sunray*, as quoted by Colorado at page 16 of its Brief, this Court stated that *Mobile* recognized that there are "two sources of price and supply stability" under the Act. The first noted was "provisions of private contracts," but these have no legal effectiveness in control of the rate outside the federal Act and actions thereunder.[7] The second "source" noted was "the public regulatory power," which here means that the rate relationship rests exclusively upon that federal power *after* a rate is on file and effective under Section 4. A producer's rate thus is

[7] See constructions of Section 4 and the Regulations in producer rate cases after *Mobile*, cited at page 32 of Pan American's Main Brief.

"legalized," as Colorado states it, *only* through Section 4, and thereafter rests upon the federal regulatory process in which questions of what is or should be the effective rate—including interpretation of contracts as in the *Texas Gas Transmission Corporation* case, *supra*—are exclusively determined. For either producer or pipeline this is not "abrogation" of "contracts." This means only that all of the jurisdictional provisions of the Act are exclusive and paramount, and that after a rate *is* effective, *only* federal law can control.

Colorado's supposed distinction in the effect of regulatory control because of form of a producer's schedule thus is refuted by all of federal constructions of the Act since 1954. Each of the cases discussed by Colorado which have involved litigation over the effective rate level in cents-per-Mcf for a producer, thus initially began before the Commission under Section 4 and proceeded to judicial review under Section 19(b) (*cf.* Colo. Br., pp. 20, 21, 25, 32, 34; and, Pan American Main Br., pp. 35-37, 42-43, and fn. 26, p. 55). None is authority for Colorado's theory that "retroactive payments" by a producer can be authorized in collateral actions, citing state or federal law, outside the exclusive statutory procedures (Colo. Br. p. 20).

D. The Montana-Dakota case illustrates statutory finality even where a contract relationship could antecede the effective rate

Montana-Dakota Utilities Co. v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951), is not pertinent here as "an attractive escape," as Colorado alleges, but illustrates exactly why this Court is correct in applying statutory finality to a rate effective under a federal statute.

Montana-Dakota involved the Federal Power Act—which like the Natural Gas Act does not "abrogate" initial contracting powers.[8] Years after tender and effectiveness,

[8] *See Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

collateral attack was made, including allegations that rested in theories that could have actually been drawn only from state law (*cf.* Colo. Br., p. 19). These theories may have been "the excuse offered by the plaintiff," as Colorado puts it, but there is an obvious parallel with the gamut of Cities' more recent "excuses," which now range from theories of involuntary payment, to alleged express "agreement," to "implied agreement," to "unjust enrichment," to "restitution," to collateral change of the rate in a state court, and to "enforcement" by a state court of the alleged "filed rate." As in *Montana-Dakota*, belated collateral attack is made—although in a state court here—and as in *Montana-Dakota*, it is alleged that a rate "merely accepted" for filing and thereby effective, is not binding as the legal rate controlling rights and liabilities of the parties.

Here, as in *Montana-Dakota*, the statute precludes such collateral change, and Section 22 further bars state court intrusion. Here, as in *Montana-Dakota*, unless statutory finality required by the Act is adhered to, there can be no stability, no presumption of certainty from rates effective under Section 4, and no result except a quick unraveling of the entire regulatory system.

In this instance, it is Petitioners who are victims four years later, of afterthoughts, uncommunicated theories as to controlling private "agreements," or *post-facto* readings of *Mobile*. And, in this instance, the attack is by a person—itself a "natural-gas company" under the Act—which never proceeded in timely manner and has ignored all agency and statutory procedures, but now comes forward with this complicated attack apparently devised after collateral decisions as to validity of a state pricing order. However, Colorado apparently does not recognize that unless statutory finality bars such an effort, all rates now effective under Section 4—including Colorado's—can be subjected to such belated collateral revision in courts of general jurisdiction.

Because instability and debilitation of Commission control of the rate level could only result, the Commission itself thus applies the *Montana-Dakota* principle to producers' rates effective under Section 4.[9] Colorado presents neither factual, legal, nor policy reasons for a contrary construction of the Act.

E. Commission procedures in regulation of producers are not defective, and establish the binding, legally effective rate at all points in time

With certain factual errors, Colorado joins Cities' efforts to discredit Commission procedures for regulating producers, and then argues therefrom that Commission acts under Section 4 are not binding and controlling, and the rate thus is outside the scope of Section 22 (Col. Br., pp. 21-38).

In response to Cities, Petitioners have corrected inferences that Order No. 174 established a process independent of then existing Regulations, Rules of Practice and Procedure, and the Act itself (*Cf.* Colo. Br., pp. 22-23); have shown the binding nature and effect of the Commission's action under the Regulations and the Act, as construed by all of the federal Courts of Appeals which have considered disputes over producers' effective rate levels under Section 4; (*Cf.* Colo. Br., pp. 24-26); have shown the proper "accommodation" of contracts as "rate schedules," the *Mobile* holding, and the provisions of Sections 4, 19 and 22 (*Cf.* Colo. Br., pp. 26-28); and have made reference to the facts as to Cities' silence and absence of communication to Petitioners, or the Commission, in 1954, 1955, and 1957, of contrary views it now expresses (Colo. Br., pp. 28-33).

Here, it is sufficient to note that all of the authorities relied upon by Colorado to discredit Commission pro-

[9] See Appendix A to Pan American Reply to Brief of Respondent Cities Service Gas Company.

cedures involved timely review under Section 19(b) of specific Commission actions under Section 4. None is authority for a collateral review and attack or for state court assumption of jurisdiction over the regulated rate. Thus, in referring to *Great Northern Railway Co.* v. *Merchant's Elevator Co.*, 259 U.S. 285 (1922), Colorado overlooks the condition stated there—"If the parties properly preserve their rights, a construction given by any court, whether it be federal or state, may ultimately be reviewed by this Court. . . ." (Colo. Br., p. 28). Colorado seeks to excuse Cities in its belated bypassing into courts of general jurisdiction, but likewise fails. The Commission's procedures have been held valid by the federal Courts of Appeals, and even if they are defective, as Colorado and Cities seek to imply, one who has not availed himself of such procedures as do exist, cannot attack those procedures collaterally. See *Yakus* v. *United States*, 321 U.S. 414 (1944).

Colorado also refers to a Commission Notice of Proposed Rulemaking in Docket No. R-168 (see Colo. Br., pp. 33; 23 Fed. Reg. 2973). As shown on its face, the "rule" under consideration would have *prospective* application only, and could not apply *retroactively*. Colorado correctly states that the Commission has not yet promulgated such a rule, but omits to point out that with respect to rates already in effect, the Commission asked for comment upon questions almost identical to those posed in the remand directive in *Portsmouth Gas Co.* v. *Federal Power Commission*, 247 F. 2d 90 (D.C. Cir. 1957). These questions included the effect under the Act of acquiescence, lack of timely protest, lack of timely review, and procedural estoppel where a person—such as Cities here—had not complied with or pursued the available administrative and statutory remedies, or made known to the Commission in a timely manner any objections to a tendered rate. At no time in that proceeding, nor in any other, has the Commission intimated a view that a state court could assume jurisdiction over the subject matter of the rate, enter judgments

contrary to the Commission's earlier acts of 1954, 1955, and 1957 under Section 4, and change the rate by collateral "judgment." To the contrary, even in "settlement order" proceedings, to which Colorado refers (Colo. Br., p. 34), the Commission has carefully pointed out the fulfillment of the statutory conditions precedent. Here, of course, Cities merely launched its attacks in state courts shortly after the Commission issued its Notice.

Colorado also discusses *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F. 2d 860 (10th Cir. 1958), involving Magnolia Petroleum Company (now Socony-Mobil Oil Company, Inc.), the subject of a "settlement order." Parallel expressions by Cities have been discussed in reply to Cities' Brief.

What Colorado here calls a "strange argument" as to binding effect of Commission acts under Section 4, is the same "argument" made by Cities itself in that case, and is the considered holding of the Court of Appeals as to necessity for timely review because of finality of Commission actions under Section 4.[10] Further, the conclusions of the Tenth Circuit as to finality and reviewability of acts at the end of the Section 4 review of a rate tender, have also been stated by the United States Court of Appeals for the Third Circuit (*Natural Gas Pipe Line Co. of America* v. *Federal Power Commission*, 253 F. 2d 3, 9

[10] The record certified here from the Supreme Court of Delaware includes Cities' memorandum to the Court of Appeals covering the binding effect of acts under Section 4, "aggrievement" therefrom, and the necessity for immediate, timely review ("Memorandum in Opposition to Motion to Dismiss and In Support of Application for Stay," filed October 11, 1957, on behalf of Cities Service Gas Company in the United States Court of Appeals for the Tenth Circuit, Case No. 5666). It was not printed here because of availability to Petitioners and Respondents, but apparently Colorado has not had the benefit of review of that document.

(3rd Cir. 1958), *cert. den.*, 357 U.S. 927 (1958)), and th
United States Court of Appeals for the Fifth Circui
(*Continental Oil Co.* v. *Federal Power Commission*, 23
F. 2d 839, fn. 3, 841, 842 (5th Cir. 1956)). The thousand
of producers' rates being charged today in such regulate
transactions rest exclusively for stability, finality, an
effectiveness upon these filing procedures and these Com
mission acts.

CONCLUSION

The *Amici Curiae* interject additional collateral attack
upon the past and current system of producer regulatio
under Section 4, and repeat implications that proper con
structions of Section 22 and application of statutor
finality in a collateral attack seven years after Commis
sion action, would be contrary to purposes of the statute
However, these contentions do not obscure the points tha
the Supreme Court of Delaware has misconstrued Section
4 and 19, and that statutory finality must be accorded t
rates enforceable only under Section 22.

For the foregoing reasons, and those set forth in Peti
tioners' Main Briefs and Replies to the "Brief of Respond
ent Cities Service Gas Company," it is respectfully
submitted that the judgment below should be reversed, an
that the Writ of Prohibition prayed for by Petitioners i

the Supreme Court of the State of Delaware thereupon should issue.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 80

PAN AMERICAN PETROLEUM CORPORATION, *Petitioner*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, AND THE HONORABLE ANDREW D. CHRISTIE, Sitting as a Judge of That Court; and CITIES SERVICE GAS COMPANY, *Respondents*.

On Writ of Certiorari to the Supreme Court of the State of Delaware

REPLY BY PETITIONER PAN AMERICAN PETROLEUM CORPORATION TO "BRIEF FOR RESPONDENT CITIES SERVICE GAS COMPANY"

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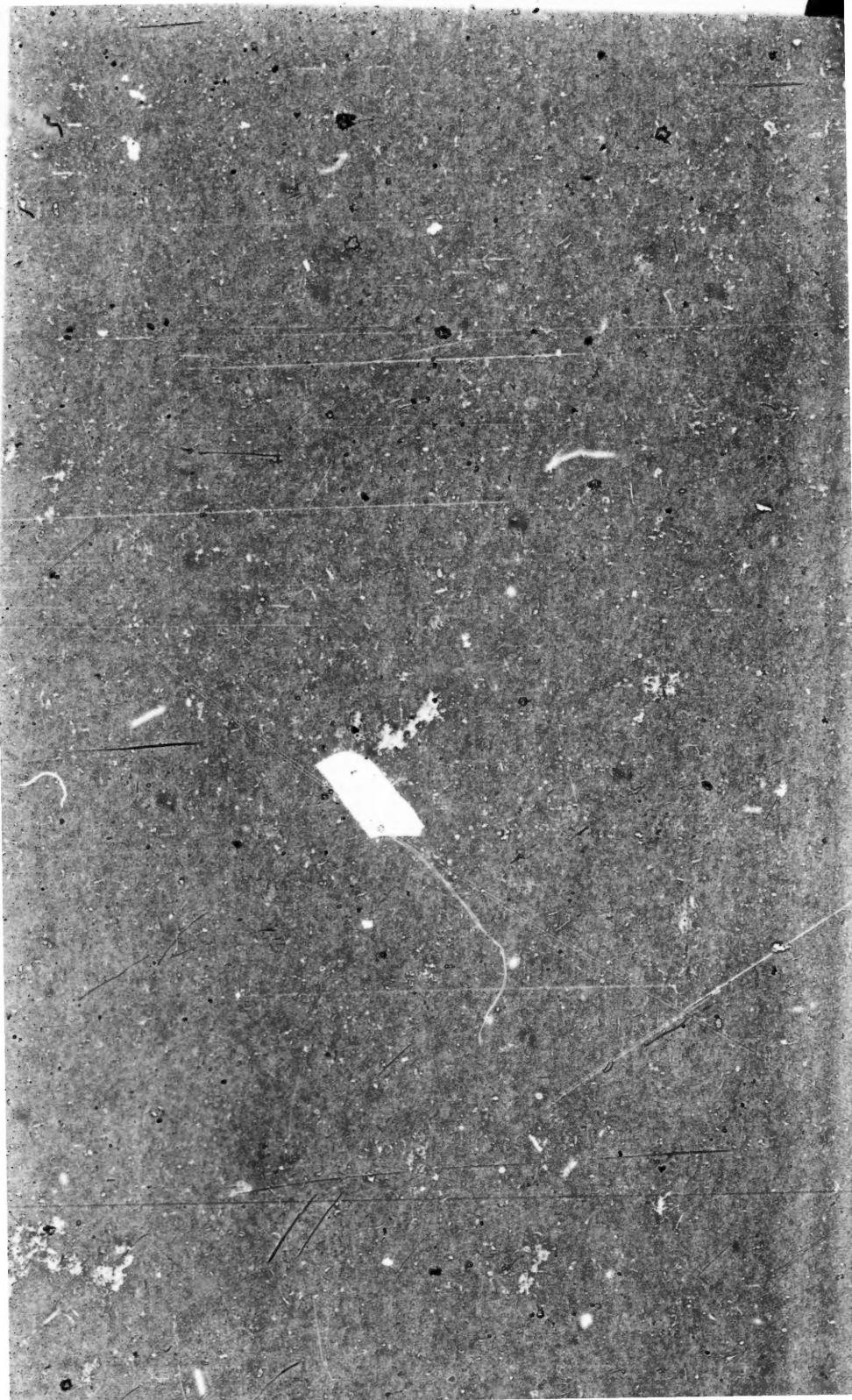
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On Writ of Certiorari to the Supreme Court of the State of Delaware

REPLY BY PETITIONER PAN AMERICAN PETROLEUM CORPORATION TO "BRIEF FOR RESPONDENT CITIES SERVICE GAS COMPANY"

Petitioner hereby replies to the Brief for Cities Service Gas Company (Cities).[1]

INTRODUCTORY STATEMENT

Cities advances two basic contentions to support state court jurisdiction, (1) that jurisdiction is to be determined solely from allegations in the complaint; and (2) that Cities

[1] Petitioner is submitting a separate reply to Briefs Amici Curiae appended to Motions for Leave to file Briefs by Colorado Interstate Gas Company and the municipalities of Atchison, Kansas, *et al.*

has a common law cause of action based on contract concurrent with a statutory cause of action based on the filed rate. Cities contends that if it chooses to frame its action in contract; despite the fact that its amended complaint discloses the nature of the regulated sale, the state court has and retains jurisdiction. Petitioner submits Section 22 may not be so circumvented, and that the effect of Sections 4 and 19, in controlling rights and liabilities, may not be so destroyed. Cities' theories are directly contrary to the Act, Regulations, and federal decisions since the Commission began exercising its jurisdiction over producers' rates.

Implications that these questions involve "flouting" consumer protection are also misplaced (*Cf.* Cities Br., pp. 57-58). The Act, of course, exists to assure "reasonable" rates, but also establishes exclusive fora and vests protective powers in the Commission. Cities' customers thus proceed within the framework of the Act and do not sue Cities in state courts. The same rule must apply to the rate relationship between Cities and Petitioner. The basic question is jurisdiction over the filed rate—the only means whereby the Commission controls the rate level in cents-per-Mcf and thus exercises the function of consumer protection.

I. SUBJECT MATTER, NOT FORM ALONE, DETERMINES JURISDICTION.

As stated, Cities brought its action to enforce an alleged price for the sale of natural gas, omitting to disclose that throughout most of the period covered by its action, the rate covering the transaction was on file with the Commission. It now asserts that jurisdiction of the state court must be determined *solely* from the form of its complaint although the complaint, as amended, and subsequently admitted facts show the state court to be without jurisdiction of the subject matter—a strong doctrine, if correct.

It was early disclosed in the trial court that the subject matter was the rate for gas sold in interstate commerce for

resale, and, as such, fell within the purview of the Act. It was also recognized that the only rate which could be enforced in any court was the filed rate. The Superior Court stated:

> "In the course of the briefing of the motion for summary judgment, *both parties agreed* that as to the period after July 16, 1954, at least *no rate may be asserted as a legal right that is other than the filed rate.*
>
> "Thus, it became apparent that a major issue in this case is the determination of what rate was the 'filed rate' with the FPC during the period in question. (R. 12) (Emphasis supplied.)
>
> . . . . . .
>
> "Both parties agree that as to the period after July 16, 1954, the only legal rate is the filed rate 'and not even a court can authorize commerce in a commodity on other terms.' *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 251 (1951). The question then becomes what rate was legally filed? Plaintiff claims that the rate filed was the contract rate, . . .". (R. 18) (Emphasis supplied.)

The Delaware Supreme Court, in spite of this recognition by the trial court that the only enforceable legal right is the right to the filed rate, stated:

> "The trial court held that the actions were suits founded on the contract to refund excessive payments, and not on the Natural Gas Act. *Agreeing with the defendants that the only legal rate is the filed rate*, it held that the contract action could be maintained if it is not inconsistent with federal law or regulation." (R. 38) (Emphasis supplied.)

Under Rule 15(b) of the Rules of the Superior Court (Civil) of the State of Delaware, as under the Federal rule of the same number, issues tried with consent of the parties are treated in all respects as if initially raised in the pleadings of the party seeking to recover under the right thus injected as an issue.

In the trial court, Cities made numerous statements to the effect that it was relying upon a filed rate rather than a "contract price." For example, it stated:

> "Suffices it to say here, that *defendant's rate schedule fixed the price at 8.4* cents and no more." (R. 765) (Emphasis supplied.)
>
> . . . . . .
>
> "*The law permits no deviation from defendant's filed rate of 8.4¢ per Mcf.*" (R. 767).

This is how both state courts and Cities characterized the action. Clearly, if "the law permits no deviation from defendant's rate schedule," then the action must be one to enforce the filed rate.

This Court thus may consider Cities' inconsistent moves to maintain its action in the state court against any attack. First it omits from its original complaint a controlling jurisdictional fact. Had this been properly disclosed, state court jurisdiction would have been subject to immediate attack. When the true nature of the subject matter, and that the rates of 14¢ and 11.0715¢ had been filed by the Commission were disclosed, Cities recognized that it could not recover on anything other than a filed rate. It met this threat by asserting that while the filed rate controls, the price it is suing for, *i.e.*, 8.4¢, *is* the filed rate. It asserted that it had "shown that defendant's filed rate schedule fixes the price for this gas at the contract rate, 8.4¢. . . . The rate fixed by defendant's rate schedule is binding upon plaintiff and defendant and upon this court with the force and effect of federal statute." (R. 767).

Having confirmed the true nature of the subject matter of its action to avoid immediate defeat, Cities then was met with the attack upon the jurisdiction of the state court. Now it returns to the "form" of its complaint. Jurisdiction must be tested solely, it asserts, from the form of that complaint. Can such tactics succeed? The very cases Cities cites to support its contention say that they cannot.

For example, Cities cites *The Fair* v. *Kohler Die & S. Co.*, 228 U.S. 22 (1913), as supporting its statements that the plaintiff is "master" of his lawsuit. There the petition, filed in the federal court, alleged a violation of patent laws; the answer asserted that there was no question arising under the patent laws. While this Court sustained jurisdiction of the federal court under the patent laws, far from holding that a plaintiff can conceal the true nature of his cause of action and in this manner sustain a jurisdiction which does not exist, this Court stated (228 U.S. at 25):

> "No doubt *if it should appear* that the plaintiff was not really relying upon the patent law for his alleged rights, or if the claim of right were frivolous, the case might be dismissed. *In the former instance the suit would not really and substantially involve a controversy within the jurisdiction of the court . . .*". (Emphasis supplied.)

Odell v. *Farnsworth Co.*, 250 U.S. 501 (1919), is also cited by Cities. There the complaint was in federal court as an action for royalties on the theory that the patent laws sustained federal jurisdiction. This Court, holding the action to be on a contract for royalties and not for infringement, sustained a dismissal for lack of jurisdiction.

To sustain its contention that the "single test of jurisdiction is the allegations of the complaint," Cities also cites *Henry* v. *A. B. Dick Co.*, 224 U.S. 1 (1912). Again the action involved a suit brought originally in federal court for an alleged infringement by a licensee under the patent laws. The law permitted two types of actions to be brought, one for breach of contract against the licensee or one for patent infringement. The plaintiff chose to bring its action for infringement. All that this Court held was that *having a* choice, the plaintiff had a right to determine which cause of action he would pursue, and jurisdiction of the federal court was upheld.

Similarly, *Taylor* v. *Anderson*, 234 U.S. 74 (1914), is cited by Cities, but that case merely held that the petition failed to disclose federal court jurisdiction. *First National Bank* v. *Williams*, 252 U.S. 504 (1920), is cited by Cities, but the case was brought originally in federal court, and this Court simply stated that a petition must disclose on its face, "that it really and substantially involves a dispute or controversy respecting the validity, construction or effect of an act of Congress," and the petition failed to make such disclosure. *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667 (1950), is cited by Cities, but was brought originally in the federal court, and involved the same doctrine that a petition must disclose some grounds for federal jurisdiction.

Cities' argument thus assumes that the requirements of invoking jurisdiction of a court and of maintaining jurisdiction are the same. This is akin to a notion that the requirement of a ticket for admission to an arena having been met, ejection is forbidden after it develops that the ticket is counterfeit. *Cf. Lambert Run Coal Co.* v. *B. & O. R. Co.*, 258 U.S. 377; (1922); *Weber* v. *Anheuser-Busch, Inc.*, 348 U.S. 468, 481 (1955).

Cities also cites various cases to support its contention that state courts are not ousted from jurisdiction when federal questions are "injected defensively," but these do not apply. *Gully* v. *First National Bank*, 299 U.S. 109 (1936), is contrary to Cities' contention. The action there was brought originally in the state court, and this Court, upholding state jurisdiction, stated (299 U.S. at 115):

> "*Not every question of federal law emerging in a suit* is proof that a federal law is the basis of the suit." (Emphasis supplied.)

The clear inference is that when the question of federal law which *is* the basis for the suit *does emerge*, then exclusive federal jurisdiction if any, must attach.

There is a vast difference between an answer which simply interposes some federal law or regulation as a "defense," as in the *Gully* case, and an amended complaint, answer and subsequent proceedings, as here, which disclose that the *basis* of the cause of action is a federal statute under which federal courts are given "exclusive" jurisdiction. Failure to recognize this distinction is Cities' basic error.

Cities also makes obscure references to *Montana-Dakota Utilities Co.* v. *Northwestern Public Serv. Co.*, 341 U.S. 246 (1951). There, the complaint alleged a cause under 28 USC §§ 1331 and 1337, and the cause of action, if one could be stated, arose under federal statutes and was cognizable in a federal court. This Court did not there hold that a party can give a court jurisdiction of the subject matter where, as here, a specific statute has removed the subject matter from the court's jurisdiction. The Court stated (341 U.S. at 249):

> "As frequently happens *where jurisdiction depends on subject matter*, the question whether jurisdiction exists has been confused with the question whether the complaint states a cause of action." (Emphasis supplied.)

Here jurisdiction *depends on subject matter*. As soon as it developed that the subject matter was a federally regulated rate, lack of jurisdiction in the state court was evident. The state court should have dismissed the action for want of jurisdiction.

In *Montana-Dakota*, this Court recognized that were the complaint to be treated as a common law action, rather than a statutory action as alleged in the complaint, then, in spite of allegations in the complaint, the federal court would have been without jurisdiction of the subject matter. The Court then held that the subject matter was a rate filed with the Commission, and that accordingly, the federal court had jurisdiction, although collateral attack was forbidden.

A plaintiff may not disguise its true cause of action and by so doing bestow jurisdiction upon a court which otherwise would lack jurisdiction. The proposition was thus stated at 14 Am. Jur. 385 § 191:

> "*Where judicial tribunals have no jurisdiction of the subject matter on which they assume to act, their proceedings are absolutely void* in the strictest sense of the term; and a court which is competent to decide on its own jurisdiction in a given case *may determine that question at any time in the proceedings of the cause, whenever that fact is made to appear to its satisfaction*, either before or after judgment. Accordingly, an objection for want of jurisdiction, if it exists, may be raised by answer or at any subsequent stage of the proceedings; in fact, it may be raised for the first time on appeal. *A court will recognize want of jurisdiction over the subject matter even if no objection is made.* Therefore, *whenever a want of jurisdiction is suggested, by the court's examination of the case or otherwise*, it is the duty of the court to consider it, for if the court is without jurisdiction, it is powerless to act in the case." (Emphasis supplied.)

A succinct statement of the principle appears in *Corbley v. Dooley*, 313 Ill. App. 509, 40 N.E. 2d 581, 584 (1942):

> "Jurisdiction of the subject matter is conferred by law and does not rest solely upon the averments in a pleading."

This Court has given a negative reply to Cities' contention in *American Express Co. v. South Dakota*, 244 U.S. 617 (1917). The Interstate Commerce Commission had ordered the express company to publish certain intrastate express rates in South Dakota for the purpose of removing discrimination against interstate commerce. The express company, purporting to act pursuant to this order, published a complete new structure of intrastate express rates, including rates from the five principal jobbing cities to all points in South Dakota. The State brought an orig-

inal action in the state supreme court seeking to enjoin operation of this statewide change in express rates. No mention was made in the complaint of the order of the Interstate Commerce Commission. The express company by answer set out the agency's order and attacked the jurisdiction of the state court on the grounds that the action was tantamount to an attempt to set aside the agency order, cognizable only in a federal court. While upholding the jurisdiction of the state court in part, this Court made clear that jurisdiction of the subject matter does not hinge solely upon allegations in the complaint (244 U.S. at 628):

> "The bill does not purport to attack, nor does it even refer to, any such order. . . . Whether or not the state court has jurisdiction cannot, of course, depend upon the professed purpose of the proceeding nor upon the mere form of pleading. . . . The answer does not allege that *all* the intrastate rates to and from the five cities which have been advanced were advanced in compliance with the order of the Commission . . . it is clear that the special tariffs here in question include advances of rates between the five cities and many 'points' in the state to which the Commission's order did not apply. . . . These rates the Supreme Court of South Dakota had jurisdiction to enjoin and the decree must be affirmed to that extent."

As to the rates covered by the federal agency order, the state court lacked jurisdiction, and this Court reversed the decree of the state court.

To say that a plaintiff has power to control his cause of action assumes he has a choice. But where he has no choice, he cannot create one artificially, as Cities attempts. Cities assumes that it has a choice between state court and federal court jurisdiction, whereas, in fact, Cities has none. Where the admitted facts ultimately before the court disclose that Cities had no choice, that the only cause of action Cities had, if it had any, was based upon rates required to be filed with the Commission and cognizable only in a federal court, then the state court was without jurisdiction

Dismissal for lack of jurisdiction then would deprive plaintiff of no "right" to "control" his lawsuit, for he had no right to be in the state court in the first place.

The subject matter of this action admittedly is the federally regulated rate. Cities' argument overlooks the fact that as to matters within the ambit of the "interstate and foreign commerce" clause of the Constitution, Congress has power to limit jurisdiction of actions to federal courts and thus pre-empt state courts. Here, it has, and Congress' determination to so pre-empt state courts is not defeated by the form of a complaint. The subject matter determines the jurisdictional limitation, and here the subject matter—the rate regulated under the Act—is beyond the reach of state courts.

II. CONCURRENT COMMON LAW AND STATUTORY JURISDICTION WOULD DESTROY FEDERAL CONTROL UNDER SECTIONS 4, 19 AND 22.

A. The Natural Gas Act completely pre-empts state control or enforcement of the rate.

Cities contends that the Act leaves parties the "right" to enter into contracts and then enforce such "contracts" in common law actions entirely separate and apart from statutory requirements of the Act. It asserts that state court jurisdiction over common law rights is not defeated even though a cause of action "could" have been brought for "violation" of a federal statutory right. As applied here, this is no more than to contend that state and federal courts have concurrent jurisdiction to enforce the rate—federal courts by virtue of the Act; state courts by virtue of contract.

To sustain this proposition, Cities cites various cases where there is no conflict between contract "rights" and rights created by federal statutes. Some of these cases deal with 28 USC §1338(a) where the statute creates federal court jurisdiction of actions for patent or copyright

infringement, and where there is no inconsistency between an action to enforce a contract and an action for infringement. For example, in *Henry* v. *A. B. Dick Co., supra*, the plaintiff chose to bring its action for infringement even though it had a cause of action for breach of contract by its licensee. Actually there is no concurrent jurisdiction, in the true sense, in these patent and copyright cases; there simply are two different causes of action. The federal statute does not purport to take away the contract rights; it purports only to limit actions for infringement to federal court jurisdiction.

Montana-Dakota makes clear that in statutes such as the Natural Gas Act there can be only one cause of action arising out of the subject matter, and that cause of action must be upon the filed rate. Even Cities recognized as did the court below, that the only enforceable rate is the filed rate, and this being true, there can be no cause of action arising out of a contract as such. As stated in *Montana-Dakota*, the only legal rate is the filed rate "whether fixed or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms." This should end all argument that there can be "concurrent" causes of action, one on contract and one on the right arising under the Act by virtue of a rate. (See also *Texas & Pacific* v. *Abilene Cotton Oil Co.*, 204 U.S. 426 (1907).)

The fallacy of Cities' contention is from reading decisions under the Natural Gas Act as holding that a "contract price" is effective and enforceable even if it is not filed with the Commission. This Court has never so held. While the Act does not purport to take away the right to contract originally as to price, this is not an uncontrolled right but is subject to the jurisdiction of the Commission to accept or reject the rate. No rate can become effective and enforceable except by being filed by the Commission under Section 4. It is obvious that the supervision and control

of the rate intended by Congress would be defeated were Cities' contention accepted.

Cities, although now saying that its action is based exclusively upon contracts, express and implied, nevertheless admits that for a court to determine the issues it must determine what rate was in effect under the Act. Cities thus states (Cities Br., p. 56):

> "... it is Cities claim that the contract rate and the legally effective rate contained in the filed rate schedules are one and the same, *and for this reason* Petitioners' defenses are without merit." (Emphasis supplied.)

The converse is that if a "contract price" and the legally effective rate are not one and the same, Petitioner's "defenses" are valid. (*Cf.* Pet. Main Br., p. 51, fn. 22.)

Cities also recognizes that the state court can in no event grant Cities relief without determining what rate was on file with the Commission (Cities Br., p. 56):

> "Obviously, in order to pass upon Petitioners' defense that the filed rate is 11¢, the state court of Delaware will have to interpret the rate schedule with reference to the pertinent federal law."

The question necessarily arises as to why, if a cause of action can be based upon contract, is a state court required to look at a filed schedule?

Cities' brief makes it perfectly clear that whatever the form of a complaint, its cause of action, if it had any, is based upon a rate allegedly on file under the Act. While Cities avers that its cause of action is based upon contract, it also avers that it cannot recover if its contract price is not the same as the rate on file with the Commission. It also asserts that its claim is that the contract price and "the legally effective rate contained in the filed rate schedules are one and the same, and *for this reason* Petitioners' defenses are without merit." All Cities' argument thus comes to is that it is basing its right to recover on a rate

on file with the Commission, and alleging that that rate is 8.4¢. When this is understood, it becomes clear that Cities' action is actually one to enforce what it claims is the filed rate. Section 22 specifically excludes state court jurisdiction of such causes of action.

Considering that both state courts and Cities concede that the filed rate must control; that no other rate can be enforced; that a contract price must yield if differing from the filed rate, is it not then clear that the Act has eliminated a common law rate action, and that the basis of Cities' cause of action, if it had one, is a filed rate? And this being true, then is it not clear that the substantial question is whether Section 22 permits "concurrent" state court jurisdiction to enforce rates required to be filed with the Commission? That section speaks for itself; it clearly restricts jurisdiction to federal courts.

B. United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956), did not imply a concurrent state-federal jurisdiction.

Under Cities' theory (Cities' Br., pp. 27-33), regulated companies, customers, and the agency could only ponder as to which rates are accorded statutory finality under the Act, and which rates are still controlled by "common law" theory, enforceable or subject to change in courts of general jurisdiction in future years. Choice would be left solely to any private person, and "finality" wholly subject to vagaries of state courts unfamiliar with detailed provisions of the federal statute, regulations, and vast body of applicable precedent.

Cities relies heavily upon *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956) (Cities Br., pp. 29-33). That case cannot be read as saying that powers of natural-gas companies to contract mean a concurrent state jurisdiction after a rate is filed. The federal courts recognize that *Mobile* also made clear that once a rate—"contract" or "ex-parte"—enters the filing process of

Section 4. Commission action fixes the effective rate in cents-per-Mcf to be charged thereafter, and thus creates and controls subsequent rights and liabilities with respect to that rate at all points in time. (See Pet. Main Br., pp. 27-31, 38-47.)

Every case cited by Cities involving interpretation of a schedule and what should be the effective rate under the Act, thus began before the Commission and proceeded into the courts under Section 19(b).[3] The federal courts' reasoning is that while the Act did not abrogate power to contract, the Act nevertheless imposes (a) requirements of filing rates; (b) primary jurisdiction of the Commission under Section 4, and its duty to decide whether to accept or reject a tendered rate; and (c) exclusive means for timely review and modification of any Commission action.

Texas Gas Transmission Corp. v. *Shell Oil Co.*, 363 U.S. 263 (1960), is illustrative. The seller believed the rate effective on June 7, 1954, was 12.5 cents, while the buyer claimed 8.997 cents should be the effective rate. (See *Shell Oil Co.* v. *FPC*, 263 F. 2d 223, 225 (3rd Cir. 1959).) The seller tendered the rate of 12.5 cents for filing under Section 4. Unlike its action upon Petitioner's tender of the 11 cents rate, the Commission then "neither accepted nor rejected the submitted rate," but requested "further ex-

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[3] This includes *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *United Gas Pipe Line Co.* v. *Memphis Light, Gas and Water Division, et al.*, 358 U.S. 103 (1958); *Texas Gas Transmission Corp.* v. *Shell Oil Co.*, 363 U.S. 263 (1960); *Natural Gas Pipe Line Co. of America* v. *Federal Power Commission*, 253 F.2d 3 (3rd Cir. 1958); *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F.2d 860 (10th Cir. 1958); *Phillips Petroleum Co.* v. *Federal Power Commission*, 227 F.2d 470 (10th Cir. 1955); *Phillips Petroleum Co.* v. *Federal Power Commission*, 251 F.2d 906 (10th Cir. 1958); *Tyler Gas Service Co.* v. *Federal Power Commission*, 247 F.2d 590 (D.C. Cir. 1957); *Portsmouth Gas Co.* v. *Federal Power Commission*, 247 F.2d 90 (D.C. Cir. 1957); *Kerr-McGee Oil Industries, Inc.* v. *Federal Power Commission*, 260 F.2d 602 (10th Cir. 1958). (Cities Br., pp. 30, 32, 33, 36, 39, 49, 52, 58).

planation" as to conflicting contentions of buyer and seller. Thereafter, the Commission decided against the seller. In timely manner under Section 19(b), the seller obtained reversal by the Court of Appeals. On writ of certiorari, this Court reviewed questions of appellate jurisdiction and the substantive dispute, and remanded for further consideration of pertinent documents.

That dispute thus was and is being litigated exclusively through procedures of the Act. At no time did the agency or courts imply, as Cities urges, that buyer or seller could have litigated their dispute in a collateral action in a court of "original jurisdiction." Because buyer and seller correctly concluded that Commission action under Section 4 as to "acceptance" of the tendered rate of 12.5 cents was the action that forever after would control their rights, both proceeded in timely manner under the Act. (See also *Sun Oil Co.* v. *Federal Power Commission*, 364 U.S. 170 (1960).)[*]

Here, *Mobile* is relied upon for a proposition that a state court may independently fix past, present, or future rights and liabilities, and that judgment by a state court, either upon "common law" theories or after re-examination of the 1954-1961 effective rate in cents-per-Mcf, may control and "enforce" the rate. If Cities' theory were correct, it would not have been necessary in the *Mobile* case for the purchaser to protest and then proceed under Section 19(b). The purchaser could have ignored the Act, permitted the tendered rate to go into effect as the filed rate, but subsequently have brought a common law action in a state court

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[*] *Cf. Natural Ga. Pipe Line Company* v. *Harrington*, 246 F. 2d 915 (5th Cir. 1957), at pages 33 and 54 of Cities' brief, which related solely to a period when no rate was on file under the Act. "Restitution" was sought for deliveries "between September 10, 1952" and "July 1, 1954" (246 F. 2d at 918). Questions of statutory finality at issue were not decided, nor did the producer test jurisdictional bars and conditions precedent to recovery sought.

based on a contract price. Obviously this was not possible, and Cities is wrong.[5]

Cities also argues that *Great Northern Railway Co.* v. *Merchant's Elevator Co.*, 259 U.S. 285 (1922), applies, but is incorrect. Section 22 provides for "exclusive" enforcement jurisdiction, unlike provisions of the Interstate Commerce Act involved in *Great Northern*. That case has never been authority for by-passing a regulatory statute in an effort to change a fixed rate relationship through "judgment," without recourse to the agency. As noted in *United States* v. *Western Pacific R. R. Co.*, 352 U.S. 59, 69 (1956), the "distinctions laid down" in *Great Northern* "call for decision based on the particular facts of each case."

Here, such distinctions are laid down by statute. Section 22, on its face, precludes Cities' construction, and *Mobile* does not imply that "concurrent" jurisdiction is possible.

C. Correct construction of Section 22 could not result in "overburdening" federal courts.

Cities argues that adherence to the exclusive prescription of Section 22 would result in a "mountainous burden of federal court litigation" (Cities Br., p. 24). To the contrary, Cities' theories would.

Until the Delaware courts' decisions, regulated companies looked only to the public records and acts under Sec-

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[5] Cities also refers to petition for declaratory judgment by Petitioner in a Kansas state court, after Cities' initial demands based on common law. (See *Pan American Petroleum Corp.* v. *Cities Service Gas Co.*, 182 F. Supp. 439 (D. Kan. 1958), and Cities Br., pp. 26-27.) That action was for declaratory judgment to determine whether price specified by contract had been amended under state law by conduct of the parties. It was *not* an action for coercive relief, for determination of filed rate under the Act, or enforcement of either a "contract price" or filed rate. That proceeding is stayed pending determination of this case.

tion 4 as fixing the rates in cents-per-Mcf and controlling all rights and liabilities. Under Section 4, the Commission has always controlled the rate level through Regulations, action upon a rate at the time of tender, and letter orders. The applicable and exact rate in cents-per-Mcf effective at any point in time was determined solely by reference to these public records (*i.e.*, R. 636-646, 651-655). Subject only to timely review under Section 19, finality was accorded this exact rate level, and bills were rendered and paid only at the cents-per-Mcf rate accepted for filing and made effective by the Commission.

As a result of this finality from Commission actions accepting tendered rates under Section 4 and exclusive review under Section 19, there has been little litigation under Section 22. Prior to Cities' attacks, there appear to have been only two reported cases involving Section 22 in the Act's twenty-year history. (See Pet. Main Br., p. 25). Cities' theories not only undermine this finality by attack in state courts, but would flood the federal courts with litigation founded upon diversity (*e.g.*, see references at pages 3 and 38 of the Motion and Brief *Amicus Curiae* by Colorado Interstate Gas Company). The result in increased litigation in the federal courts is obvious.

Proper construction of Section 22, and adherence to precedents laid down by federal Courts of Appeals, means that disputes over a rate relationship remain in the framework of the Act. However, if Cities' views were sustained, Petitioner, all other producers, and customers would be free to question and change Commission acts and now effective rates in cents-per-Mcf by resorting to ancillary, collateral litigation outside the primary administrative jurisdiction under Section 4, appellate jurisdiction under Section 19, and enforcement provisions of Section 22.

III. THE STATUS BETWEEN JANUARY 1, 1954 AND THE FILING OF THE RATE.

Cities implies that even though the state court may lack jurisdiction to adjudicate the filed rate, it had jurisdiction over the price between the effective date of the Kansas order and the date of filing (Cities Br., p. 33). This contention requires consideration of Cities' claim that the Kansas order was void *ab initio*. (See R. 14-18.)

Cases giving rise to contention that the Kansas order was void *ab initio* begin with *Phillips Petroleum Co. v. State of Wisconsin*, 347 U.S. 672 (1954), holding independent producers to be "natural-gas companies" under the Act. Next came *Natural Gas Pipeline Co.* v. *Panoma Corp.*, 349 U.S. 44 (1955), wherein this Court invalidated on Oklahoma minimum price order on the ground that it conflicted with Commission jurisdiction. It was not stated whether the Oklahoma order was void *ab initio* or only after affirmative control of the rates had been assumed by the Commission. Next, in *Cities Service Gas Co.* v. *State Corp. Comm. of Kansas*, 355 U.S. 391 (1958), the *per curiam* opinion of this Court merely reversed the Kansas Supreme Court's holding that the Kansas order was valid. This Court cited *Panoma, supra*, as authority, but nothing was said on the void *ab initio* question. Next, the Kansas Supreme Court construed this Court's *per curiam* decision:

> "... we understand the Supreme Court of the United States to hold that on January 1, 1954, the State of Kansas had no jurisdiction to regulate the price of natural gas as it came out of the gas well since that price would affect interstate commerce and the jurisdiction of the Federal Power Commission." (184 Kan. 540, 544)

Possibly the Kansas order was void *ab initio*, but it appears that this Court may not have so ruled, and the Kansas Supreme Court has only stated what it "understands" to be the effect of this Court's *per curiam* order. (*Cf.* Pet. Main Br., p. 12, fn. 9.)

Either the Kansas order or the Act must have been the legal touchstone determining questions concerning the price of Kansas gas during the period prior to June 7, 1954. If the Kansas order was effective, the plaintiff cannot recover here even under its own allegations, because the Kansas order controlled. If, however, Kansas regulation did not control because the Act did, plaintiff's claims must be based upon that Act, and a state court could not have jurisdiction.

IV. THE COMMISSION EXERCISED ITS PRIMARY JURISDICTION AND DUTY BY ACCEPTING AND MAKING EFFECTIVE THE RATES OF 11 AND 11.0715 CENTS; THE RIGHTS AND LIABILITIES OF THE PARTIES CANNOT BE ENFORCED IN A STATE COURT.

A. Rates on file exclusively determine rights and liabilities of the parties.

Cities labels references to Sections 4 and 19 as merely "merits of a defense," but then argues that the "contract rate" is "the filed rate". (See Cities Br., pp. 35-56). Sections 4 and 19 are pertinent here to statutory finality in the face of assertion of state court jurisdiction. Misconstruction of the binding effect of Commission acts, and of the jurisdiction of the Courts of Appeals, apparently led to acceptance below of Cities' oft-repeated "contract" language as controlling upon source of rights and liabilities enforceable under Section 22. (*Cf.* R. 8, 12-13, 18, 21, 33, 35-37, 278-281, 282-554, 764-767, 768-770).

Cities' argument here is the same belittling of Commission procedures in 1954, 1955, and 1957, and which are still the Commission's only procedures for regulating a producer's rate. Petitioner has shown the effect of Section 4 upon rights and liabilities once a rate *is* accepted and effective (Pet. Main Br., pp. 25-37), and reasons and necessity for according finality to Commission actions (Pet. Main Br., pp. 38-47).

Repeatedly, Cities now states that in accepting Petitioner's rate the "Commission carefully preserved Cities' sub-

stantive rights," *e.g.*, Cities Br., p. 37. The most pivotal point in this controversy relates to the legal effect of the Commission action. If when the filings were tendered the Commission decided to accept 11c as the filed rate rather than to reject it, then right or wrong that determination cannot be attacked collaterally. If the determination was incorrect but was not appealed, that determination has acquired statutory finality and cannot now be changed by any court or by the Commission itself.

In *Mobile* this Court said (350 U.S. at 347):

> "There can be no doubt of the authority of the Commission to reject the unauthorized filing under its general powers to issue orders 'necessary or appropriate to carry out the provisions of this Act,' Sec. 16, and its failure to do so and its order 'permitting' the new rates to become effective were in error."

If it was "error" to so fail to reject an "unauthorized" tender, it follows that the Act imposes on the Commission a duty to determine whether each tendered rate is so "authorized" or "unauthorized." That duty can be performed only by deciding at the time of the tender whether the rate should be accepted for filing, or whether for some legal or other reason, the tender should be rejected. Therefore, the Commission has and exercises this primary jurisdiction to determine whether to accept or reject a tendered rate. The Commission obviously has jurisdiction to "err," and, if "errors" are not corrected on appeal, such decisions become just as binding as a "correct" decision.

This record shows that the Commission accepted and made effective Petitioner's tendered rate. Under the Act, such acceptance rests upon the fact that the decision to accept or reject was resolved by the Commission in favor of acceptance. Cities now says that in accepting rate filings the Commission does not determine anything. If Cities were correct, it must be presumed that the Commission

does not do its duty, but certainly neither the law nor the facts permit such a presumption. Cities' argument that the Commission "did not decide" anything thus collapses in the face of the Commission's statutory duty *and* the fact that Petitioner's rate was accepted and is now legally binding.

B. The Commission applies the Montana-Dakota rule to require collection of the exact cents-per-Mcf rate effective under Section 4.

Any implication that the Commission itself does not apply the *Montana-Dakota* rule in vigorous control of the effective rate level in cents-per-Mcf that producers may charge under the Act, can be quickly laid to rest.

As recently as February 15, 1961, the Commission reiterated that a producer "'can claim no rate as a legal right which is other than the filed rate, whether fixed or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms'."[*] The Commission further stated that if producers "were not required to collect" the rate made effective through procedures of Section 4, "... serious problems would confront not only pipeline purchasers of natural gas, and, in turn, distribution company purchasers of natural gas, but also the Commission itself in the administration of the Natural Gas Act."

Petitioner's position is wholly consistent with such holdings, and Cities' theories are directly contrary. Cities merely repeats or implies, again and again, that Petitioner and Cities have entered into an alleged written or implied "refund agreement," to change the effective rate collaterally. (Cities Br., pp. 3, 5-6, 7, 9, 12, 16, 18, 20, 24, 35, 36,

[*] Re *Alfred C. Glassell, Jr., et al.*, FPC Docket No. RI60-130, Order of February 15, 1961, page 3, mimeo. ed. As this Order is not yet reported, it is set forth completely as Appendix A to this brief.

35). Petitioner has always been prepared to show that there never has been such a collateral "agreement." (R. 620-634)[7] There can be no automatic "conditional"[5] rate under the Act. (*Cf.* Cities Br., p. 38 and Pet. Main Br., pp. 30-32).

The controlling rate always remains that currently effective under the Act, to which the Commission itself applies the *Montana-Dakota* rule.

C. The effective rate in cents-per-Mcf cannot be changed by "automatic" operation of a contract or collateral "contingencies."

Cities implies that Order No. 174 set up a system wholly apart from the Act and existing Regulations

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[7] Here it suffices to note that:

(a) Cities' Brief now concedes at page 38 that documents tendered by Petitioner in 1954 contained ". . . the only agreement Petitioners had and could file with the Commission . . ."; and Petitioner's filing there discussed does *not* include correspondence or vouchers which Cities later alleged below could constitute "a refund contract" (see R. 285-308, 309-484, 485-491, 496-498);

(b) Cities' own letter of January 21, 1954 refers solely to payments pursuant to a state order, makes no reference to federal rate regulation or payments pursuant to filed rates under the Act, and is but a unilateral announcement of a claim that payments under the old state order were considered by Cities to be "involuntary" (see Cities Br., p. 5);

(c) The "Stanolind letter," if anything, was only a proposition which Cities ignored, and which refers solely to "an adjudication which would be binding and controlling on Stanolind" without reference to the Natural Gas Act;

(d) Initial demands made by Cities in 1958 were on alleged grounds wholly inconsistent with an actual or implied ancillary agreement;

(e) "Involuntary" payment under *a state order*, by Cities, Petitioner or anyone, has nothing to do with payment under *the federal rate* since June 7, 1954 (*cf.* Cities Br., p. 6.)

and Rules, and then that collateral change of the effective rate in cents-per-Mcf is permitted (Cities Br., pp. 8-11, 16-17, 37, 42-49). Each of these arguments or implications is wholly without foundation.

Order No. 174 (19 Fed. Reg. 4534, 8807 (1954)) was but one of many orders issued since 1938 amending the Regulations. Existing Regulations otherwise applicable to producers and Cities as "natural-gas companies," and all provisions of the Rules for protests or complaints remained applicable. (See Pet. Main Br., pp. 27-28). Sections 4, 19, and ultimately Section 22, likewise applied, and do apply, in producer regulation. Cities, like any other person, was required by the Act to comply with these Rules, Regulations, and the Act to make known any of its views in 1954, 1955, and 1957. (*Cf.* Cities Br., pp. 8-11, 16-17, 37, 42-49).

As published in 1954, apprising all affected persons, the Commission thus prescribed Section 154.94(a) of the Regulations:

> "(a) *No change* shall be made *in any rate*, charge, or service *in effect, on or after* June 7, 1954, for the interstate transportation or sale of natural gas in interstate commerce subject to the jurisdiction of the Commission by any independent producer required to file rate schedules pursuant to Section 154.92 hereof, *without first filing a change in rates pursuant to Section 4(d)* of the Natural Gas Act, and in accordance with this Section." (Emphasis supplied.)

The Commission further clearly prescribed in Section 154.94(c):

> "(c) The *operation of any provision* of the rate schedule *providing for failure* or periodic *changes* in *the rate*, charge, classification, or service, after June 7, 1954, *or* the *operation* of *any like provision* in any initial rate schedule filed after June 7, 1954, *shall* constitute a *change* in *rate schedule*." (Emphasis supplied.)*

* Section 154.94 is reproduced in full at pp. 67-69 of Petitioner's Main Brief.

These Regulations remain in full force and effect today. (*Cf.* Cities Br., pp. 39, 40-41, 43, 47, 56).

The Commission thus assumed the primary duty of determining the effective rate in cents-per-Mcf for each sale, upon the basis of the rate tender. The whole purpose of the requirement in Section 154.92 for a "statement showing actual billing" in exact cents-per-Mcf (see R. 496-498); of Commission review of the tender and the Commission's Summary; of formal consideration of the tendered rate in cents-per-Mcf; of specification by the Commission of the effective rate in cents-per-Mcf; and of notice of acceptance for filing after the Commission's formal vote, is to make an exact cents-per-Mcf rate legally effective and binding under the Act and Regulations. All are set forth in public documents and are notice to the public—including Cities—of the contents thereof (see Pet. Main Br., pp. 19, 22-23). Consistent with the Act and Regulations, the Commission's letter orders thus also prohibit any change in the effective rate except by tender of a new rate under Section 4 (R. 640).

There thus can be no type of automatic, collateral increase or decrease of the rate in cents-per-Mcf by means of collateral agreement, collateral "construction" or contingencies, or "enforcement" of a different price by state court judgment. Such a theory has long since been rejected by the federal Courts of Appeals, even when *Mobile* has been invoked.[9]

Cities thus strikes collaterally at the heart of the Commission's system of regulation of producers by exercise of its primary jurisdiction and duties under Section 4. If the

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[9] See *Bel Oil Corp.* v. *Federal Power Commission*, 255 F. 2d 548 (5th Cir. 1958), *cert. den.*, 358 U.S. 804 (1958); *Continental Oil Co.* v. *Federal Power Commission*, 236 F. 2d 839 (5th Cir. 1956); *Episcopal Theological Seminary, et al.* v. *Federal Power Commission*, 269 F. 2d 228 (D.C. Cir. 1959), *cert. den., sub. nom., Pan American Petroleum Corporation* v. *Federal Power Commission*, 361 U.S. 895 (1959).

rate level can be so collaterally changed here, then each and every other rate effective under the system Cities belittles, is now subject to decrease or increase by state court re-examination of Commission acts. The pertinent point here, however, is that this effective rate level is binding as to rights and liabilities and can neither be changed, nor modified, nor enforced by collateral actions in a state court.

D. Collateral examination of reasons for the federal agency's acts is prohibited.

Cities seeks a collateral "mind-reading" after a federal agency acts, but this is also incompatible with any administrative process. (See *United States* v. *Morgan*, 313 U.S. 409, 422 (1941), and Pet. Main Br., pp. 26, 46, 50).

Cities concedes that the Commission "could and did accept" Petitioner's tender (Cities Br., p. 38); that the Commission "acted on these rate filings" (Cities Br., p. 42); that the Commission "considered and accepted" the tendered filing (Cities Br., p. 47); and that the Commission "voted to accept" Petitioner's tender (Cities Br., p. 47). These actions may not be an "adjudication" or "modification" in a sense Cities implies, but are definitive steps in the administrative process required by the Act, result in inevitable consequences under the Act, and bind and control the rate relationship until the rate level is properly changed.[10]

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[10]It would appear that the Commission prepares its Summaries for use in its formal meetings to pinpoint the "cents-per-Mcf" rate for its expeditious review of the tendered rate (*Cf.* Cities Br., p. 47). Many such Commission determinations under Section 4, controlling the effective rate level in cents-per-Mcf, have been reviewed exclusively under Section 19(b), *e.g.*, 10.1829 cents or 9.8262 cents in *Cities Service Gas Producing Co.* v. *Federal Power Commission*, 233 F. 2d 726 (10th Cir. 1956); 13 or 13.5 cents in *Episcopal Theological Seminary, et al.* v. *Federal Power Commission*, 269 F. 2d 228 (D.C. Cir. 1959); 8.374 cents or 8.4684 cents in *Phillips Petroleum Co.* v. *Federal Power Commission*, 227 F. 2d 470 (10th

Brief, specific reference may be made to procedures Cities assails (Cities Br., pp. 35-57):

1. *Petitioner's rate tenders.* Petitioner's rate tenders were submitted subject to the prohibition of automatic fluctuation in rate, *supra*, once the Commission accepted and made effective a given rate. (See Pet. Main Br., pp. 30-32, and R. 703-725). Neither Petitioner nor apparently the Commission was then apprised that Cities privately believed some ancillary refund "agreement" existed or was implied to exist. The record shows results of Commission review, and the effective rates of 11 and 11.0715 cents under Section 4, subject to Sections 154.94(a) and (c) of the Regulations. These rates are no more "conditional" or subject to "automatic" or "contingent" fluctuation by private agreement or through collateral proceedings than are any of thousands of other rates now so effective under Section 4.

2. *Opportunities available to Cities.* The record shows service upon Cities in 1954 and 1957 (R. 758-759, 648). At no time did Cities then make known its private notions that the Act and Regulations permit a "contingently" effective rate, its theory as to a "refund contract," or even status of its efforts, if any, to contest validity of a state order in collateral proceedings to which neither Petitioner nor the Commission were parties. Yet Cities was on notice as to the tenders, the Rules for protest or complaint, Regulations, the Act, and all administrative and judicial constructions thereof.

3. *The Commission's letter orders.* Cities continues efforts to discredit Commission letter orders but the Commission itself has told the courts these are binding orders as to time and rate level. (See, *e.g., Continental Oil*

Cir. 1955); 11 cents or 16.8 cents in *Warren Petroleum Corp.* v. *Federal Power Commission*, 282 F. 2d 312 (10th Cir. 1960); and 6 cents or 11 cents in *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F. 2d 860 (10th Cir. 1958).

Co. v. *Federal Power Commission*, 236 F. 2d 839, fn. 3, 841, 842 (5th Cir. 1956).) Cities, nevertheless, asserts that a reservation of "approval" as to "reasonableness" means the accepted and effective rate may be collaterally changed. (*Cf.* Cities Br., pp. 45-46, and Pet. Main Br., p. 34, fn. 18). However, the identical reservation of "approval" appears in the order "accepting" an 11 cents tender held to be binding, final and reviewable, as Cities itself argued, in *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F. 2d 860 (10th Cir. 1958).[11] Cities also fails to note that the identical reservation of "approval" is used in orders "accepting" and making effective Cities' own rates,[12] but Cities and its customers emphasize here that Cities' own rate relationship is exclusively controlled by Commission orders. Obviously, precise format of such letter orders is not significant, and may change from time to time; what is significant is the legal effect of such orders and Commission acts under Section 4 in controlling rights and liabilities. Reservation of "approval" has never meant collateral change is authorized. See *Signal Oil & Gas Co.* v. *Federal Power Commission*, 238 F. 2d 771, 773 (3rd Cir. 1956).

4. *Petitioner's certificate in Docket No. G-4904.* Cities also implies that a certificate issued under Section 7 some-

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[11] I.e., ". . . nor shall it be construed as constituting approval by the Commission of any service, rate, charge, classification, or any rule, regulation, or practice affecting such service or rate provided for in the above-described rate schedule, nor shall this order be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate. . . ." (R. 681, 693, 694, 697-698).

[12] I.e., ". . . nor shall this order be construed as constituting approval by this Commission of any service, rate, charge, or classification, or any rule, regulation, or practice affecting them; nor shall this order be deemed as recognition of any claimed contractual right or obligation affecting or relating to any service, rate, charge, or classification." Unreported Commission order of April 3, 1959 accepting for filing and allowing a Cities Service Gas Company rate to go into effect, reproduced in its entirety as Appendix B, *infra*.

how obliterated controlling actions in 1955 and 1957 under Section 4, accepting and making effective tendered rates (Cities Br., p. 49; Pet. Main Br., p. 9, fn. 7). The face of the order reflects early stipulation of all parties—*including Cities* and Commission Staff—that that docket was not a proper forum for this controversy (Cities Br., p. 3a). The certificate order simply shows Commission agreement that a Section 7 proceeding is not appropriate for determining binding effect of past actions under Section 4, collateral review, or "enforcement" of rights as under Section 22.[13] The Commission recognized that a rate of 11 cents is fully in accord with the Section 7 standard of public convenience and necessity, but the 1954 and 1957 acts under Section 4 were correctly left untouched, and the Commission did not presume to exercise jurisdiction of the Courts of Appeals under Section 19, or the federal District Courts—including that of Kansas—under Section 22.

Correctness of such action is shown by the order in Appendix E, Cities Br., pp. 21a-27a. That "settlement order" between Magnolia Petroleum Company (now Socony-Mobil Oil Company, Inc.) and Cities sets forth the step-by-step conditions precedent to the type of relief Cities now seeks in a state court. The Commission refers specifically to review under Section 19(b) "of Commission acceptance" of a tendered rate under Section 4 (255 F. 2d 850); to Commission compliance with "a mandate from the court"; and lastly, to suit by Cities in the United States District Court for the District of Kansas (Cities Br., pp. 21a and 22a).

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[13] Cities erroneously implies that the Commission's reference to "Kansas courts" for ultimate resolution of the dispute means "state courts." (Cities Br., p. 50). The record before the Commission in Docket No. G-4904 closed on November 6, 1958 (Cities Br., pp. 2a-8a). At that time and until December 31, 1958, action in Kansas was pending in the United States District Court for the District of Kansas, to which it had been removed by Cities. (See *Pan American Petroleum Corporation* v. *Cities Service Gas Co.*, 182 F. Supp. 439 (D. Kans. 1958).)

Thus, in no sense did the Section 7 order in Docket No. G-4904 change the rate on file since 1954, nor does it bless state court jurisdiction over that rate.

5. *Commission consideration of validity of Kansas Order.* Cities' speculation now as to what "might-have-been" is irrelevant and improper, but Cities is wholly in error in its statement that in 1954 or 1955 the Commission "had no choice but to accept" a tendered 11 cent rate. The then sitting Commissioners *may* not have ascribed validity to the 11 cents rate *had* Cities *then* stated its private views as to acceptance and effectiveness of 11 cents as the federal rate. Compare Cities Brief, pp. 51-52 and fn. 40; *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, 328 U.S. 152, 160-166 (1946); and *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320 (1958).

In exercise of paramount jurisdiction over the rate and by accepting the 11 cents rate under the Act, the then sitting Commissioners apparently recognized the 11 cent rate level as desirable and required for conservation and control of inferior uses of natural gas, consistent with the Commission's functions under the Act. However, *had* Cities made known its contentions, the then sitting Commissioners *might* have rejected a tendered rate as has been done on other occasions; *or*, the Commissioners might have deferred "acceptance for filing," pending consideration of Cities' contentions.

The fact remains that no one was apprised of views Cities began asserting *only* in January, 1958, and now sets forth in state courts and here.[14] The fact also remains that the

[14] As stated in its Answer (R. 620), Petitioner has always been prepared to demonstrate, in a proper forum, that instead of contesting the validity of the 11¢ rates, Cities was actually supporting validity of producers' filed rates of 11¢ per Mcf. *Cf.* questions remanded in *Portsmouth Gas Co.* v. *Federal Power Commission*, 247 F. 2d 90 (D.C. Cir. 1957).

Commission's acceptance of 11¢ as the federal rate was without condition, and definitively established the effective rate in cents-per-Mcf under the Act. What "might" have happened had Cities proceeded in a timely manner can only be the subject of speculation now—not a basis for state court jurisdiction.

E. The Magnolia Petroleum Company (now Socony-Mobil Oil Company, Inc.) case illustrates Cities' failure to exhaust administrative remedies and pursue statutory procedures.

Apparently to obscure relevance to jurisdiction, Cities refers only to substantive issues in the "Magnolia Petroleum Company" and "Dorchester Corporation" cases (Cities Br., pp. 52-57). The contrast with collateral attack in state courts still shows through (see Pet. Main Br., pp. 35-36, 42-43, and 43-45).

The legal effect of Commission action in *Magnolia* is identical to legal effect of its action here. In both instances it "accepted for filing" rate schedules specifically including the Kansas order. In both instances it said (a) that any change in *the* rate being accepted would constitute a change in rate which could not be effectuated *without* filing notice under Section 4(d), even though documents might provide such change could be "automatic"; (b) that "acceptance" did not constitute "approval" of any rate; (c) that its action should not be construed as a waiver of requirements of Section 7; (d) that its action should not be deemed as recognition of any claimed "contractual right" or "obligation" relating to the rate; and (e) that such "acceptance" was without prejudice to whatever action the Commission might take in future proceedings involving that producer. Even the language used by the Commission is practically verbatim. (*Cf.* R. 659-667, 670-677, 680, 683, 684-692, 693, 697, 700-703).

Agreeing fully with Cities' own contentions, the Court of Appeals held that any rights of Cities to redeem pay-

ments would be foreclosed by an outstanding Commission order of acceptance of the tendered rate of 11¢ as the legal rate under Section 4, and that Cities was correct in timely protest and judicial review under Section 19(b). (*Cities Service Gas Co.* v. *Federal Power Commission*, 255 F. 2d 860, 862, 863 (10th Cir. 1958).[15]

Cities cannot obscure the fact that the legal effect of the Commission's actions in *Magnolia* and here is identical. Being "aggrieved" there, Cities was so "aggrieved" here. It pursued its administrative remedies there, but did not here. There is no excuse for that failure and collateral proceedings here.

Cities' efforts to distinguish the necessity for proceeding under the Act in one instance, and not in another, have but one recurrent theme—a recital of what was in Cities' own private mind and changes of its own thoughts from 1954 through 1958, never made known to the Commission or to Petitioner (Cities Br., pp. 52-53). Yet this silence is particularly pertinent when the face of the 1954 Regulations and developing precedent in producer regulation were and are directly contrary to these thoughts Cities now asserts.

Cities thus refers to private thoughts that Petitioner had "agreed" to a prohibited "retroactive refund" or "automatic" rate change *after* June 7, 1954 (Cities Br., pp. 54-55); yet, Cities' idea came as a surprise in 1958, and, of course, was never communicated by Cities to the Commission during the four preceding years. Cities also, seems to be saying that a "decision" in "the *Panoma* case" somehow caused change in these private thoughts, and only thereafter did it pursue administrative remedies

[15] Finality of such orders and reviewability is also illustrated by *Continental Oil Co.* v. *Federal Power Commission*, 236 F. 2d 839 (5th Cir. 1956), and *Warren Petroleum Corp.* v. *Federal Power Commission*, 282 F. 2d 312 (10th Cir. 1960).

(Cities Br., p. 53).[16] There had been "a decision" in the "*Panoma* case" when Petitioner tendered its change of rate from 11¢ to 11.0715¢, yet Cities still remained silent on July 1, 1957 (R. 651, 653, 654-655).

The questions of significance here are how the Commission was to follow or act on all of these shifts in Cities' private thoughts, and how it or anyone else was supposed to guess in 1954, 1955, or 1957 just when Cities thought the Kansas order was valid, or when Cities did not; or just when Cities thought the Commission might have erred in accepting and making effective 11¢ as the effective rate *under the Act*, or when Cities thought otherwise.

It is clearly unlawful for agency and statutory procedures to be bypassed and overturned on the basis of such afterthoughts four years later. Cities simply did not pursue its remedies in timely manner and asks this Court to approve its use of state courts as a belated substitute for appellate review under Section 19(b).

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[16] Cities' afterthoughts become even more mysterious when the cases are considered. On January 20, 1958, this Court reversed the Kansas Court as to validity of the *Kansas* wellhead pricing order. (*Cities Service Gas Co.* v. *State Corporation Commission of Kansas*, 355 U.S. 391 (1958). Yet, it was not until seven day *later*, on January 27, 1958, that this Court reversed the Oklahoma Supreme Court, invalidating the *Oklahoma* order involved in "Panoma" *insofar as it also applied to wellhead sales*. *Phillips Petroleum Co.* v. *Corporation Commission of Oklahoma*, 355 U.S. 425 (1958). Cities' statement that "a decision" in "the *Panoma* case" convinced Cities to begin pursuing its administrative remedies with respect to an 11¢ rate for *Kansas* sales only on February 5, 1957, thus bears little relationship to what actually took place in rulings on the Oklahoma and Kansas Orders—although this might have been the process of Cities' private thoughts.

V. CITIES HAS MADE CLEAR THAT IT SIMPLY SEEKS TO BYPASS THE CONTROLLING PROCEDURES OF THE ACT.

Lastly, Cities refers to a "refund condition" specified in Cities' rate case in Docket No. G-2410 (Cities Br., pp. 6, 57-58). Petitioner's rate was not there in issue.[17] Petitioner is not named in that order, nor has it ever been one of the unnamed "companies involved in cases questioning the so-called Kansas Minimum Price Order." (See R. 559-560, 564, 566, 571). In that order, the Commission made no attempt to specify procedures as to rates of suppliers to Cities which are subject to Section 4. As illustrated by Cities' Appendix E, conditions precedent to any act by Cities under the order in Docket No. G-2410 required pursuit by Cities of exclusive administrative and statutory processes.

Cities' customers also must be aware of Cities' actions which long ago indicated acquiescence in validity of federal rates of suppliers who are "natural-gas companies" and who filed under the Act in 1954 and 1955. Cities and its customers thus have had the benefit of substantial investment by producers and the increased supplies made possible by the very reasonable conclusion that the rate of 11 cents under the Act was stable and unquestioned. These are matters which Petitioner has always been prepared to show in a proper forum (R. 627-631, 632-634).[18] More pertinent

[17] For example, the Commission by Order issued February 9, 1961, in Cities Service Gas Company, *et al*, Docket Nos. G-18799, *et al*, held that only pipeline customers and consumers of gas sold by pipeline companies have an interest in pipeline company rate proceedings and that independent producers do not have an interest in such proceedings. (See Cities Br., pp. 19a-20a.)

[18] In its recent Statement of Policy No. 61-1, the Commission, considering consumer protection and adequacy of gas supply, recognized as necessary and acceptable to it, and required by those objectives, a rate of 16 cents per Mcf for new sales in the State of Kansas, and a rate of at least 11 cents for existing sales (See 25 Fed. Reg. 9578-9579 (Oct. 5, 1961).)

here are questions of rate stability through Commission control, without which a regulatory system cannot function.

Cities recognizes that "jurisdiction" does not turn upon the "result reached," but upon the "power" of a body to act. (Cities Br., p. 14). This is precisely why primary jurisdiction over the rate is vested in the Commission, why statutory finality is accorded to Commission acts, and why those acts may not be attacked collaterally. (See Pet. Main Br., pp. 25-32). For reasons obviously considered proper to the then members of the Commission, the 11 cents base rate was accepted for filing and *is* effective under the Act. Cities' attack here is colored by reference to a state pricing order, but the procedures in question relate to a host of other disputes involving interpretation of schedules and collateral re-examination of Commission acts under Section 4.

Cities' position is equivalent to that of the bondholders in *Chicot County Drainage District* v. *Baxter State Bank*, 308 U.S. 371 (1940). In a prior case, acting under a federal statute, a court had issued an order that bondholders had to file their claims by a certain date or the claims would thereafter be barred. The bondholders raised no question as to this order. Subsequently, and in a different proceeding, the statute under which that court had acted was held to be unconstitutional. Thereafter the bondholders brought suit upon their bonds, but this Court held that the previous court order rendered this subject final and binding as to these bondholders, and that the fact of unconstitutionality of the statute could not be used to reach backward and reopen an action which had become final. Here, if Cities desired to interpose a claim that a state order was invalid or that 11 cents should not have been accepted and effective under the federal Act, Cities should have done so. It cannot now reach backwards and employ a decree from a totally unrelated proceeding on a state order to destroy federal acts which have become final. Cities is hardly in a

position to claim that the administrative and statutory procedures were inadequate to protect its position when it did not use the procedures available (See *Yakus* v. *United States*, 321 U.S. 414 (1944); *Goldsmith* v. *Board of Tax Appeals*, 270 U.S. 117 (1926).)

Throughout this particular attack, Petitioner's position has been (1) that under the Act, the effective rate cannot be subjected to collateral attack and retroactive revision, but is binding until the rate level is changed under Sections 4 or 5; (2) that once the subject matter in dispute is so recognized, rights and liabilities can be enforced only under Section 22; (3) that *if* it could now be proper to go behind the filed rate and re-examine a "source" in "state law," Cities' allegations are without foundation, and under Kansas law, the relationship has been modified so that a rate of 11¢ is still binding; and (4) that *if* germane in any forum, the rate level of 11¢ is consistent with tests of consumer protection, adequacy of gas supply, and is not in any way "unreasonable" but is below current compensatory rate levels.

As the case has now reached this Court, Cities' purposes are clear. The subject matter has been revealed; and results of intrusion of a state court into the regulatory process have been classically demonstrated.

CONCLUSION

For the foregoing reasons, and those set forth in Petitioner's Main Brief, it is respectfully submitted that the judgment of the Supreme Court of the State of Delaware

should be reversed and vacated, and that thereupon a Writ of Prohibition prayed for in that court by Petitioner should issue.

Respectfully submitted,

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April, 1961

(APPENDIX A)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, Arthur Kline and Paul A. Sweeney.

Docket No. RI 60-130

ALFRED C. GLASSELL, JR., *et al.*

Order Denying Motion for Reconsideration and Modification of Notice of Effectiveness of Proposed Rate Change and Requiring Filing of Bond To Assure Refund of Excess Charges.

(Issued February 15, 1961)

On January 16, 1961, Alfred C. Glassell, Jr., *et al.*, (Glassell) filed a motion[1] seeking rehearing, reconsideration and modification of the Commission's Notice issued herein on December 16, 1960, pertaining to Glassell's Motion to make effective the increased rate contained in Supplement No. 5 to Glassell's FPC Gas Rate Schedule No. 1, applicable to jurisdictional sales of natural gas to Tennessee Gas Transmission Company produced from the Carthage Field, Panola County, Texas (Railroad District No. 6).

This proceeding involves a proposed redetermined increased rate to 14.4248¢ per Mcf at 14.65 psia contained in Glassell's aforementioned supplement and suspended by the Commission's order issued February 10, 1960, until July 11, 1960, and thereafter until such time as it is made effective in the manner prescribed by the Natural Gas Act.

[1] A petition for rehearing of an interlocutory order such as here involved may not properly be filed. [Section 1.30 (e) of the Rules of Practice and Procedure (18 CFR 1.30 (e))]. The instant tender has been considered as a motion for reconsideration pursuant to Section 1.12 of the Commission's Rules of Practice and Procedure.

On November 3, 1960, Glassell filed their motion to make the suspended rate effective in the manner prescribed by Section 4 (e) of the Natural Gas Act. On December 16, 1960, the Commission issued its notice of effectiveness of proposed rate change requiring Glassell to file a surety bond and to charge and collect the increased rate contained in Supplement No. 5 to their FPC Rate Schedule No. 1 as of November 3, 1960, subject to refund. By their motion for reconsideration, Glassell is seeking deletion of this requirement that they file bond and charge and collect the increased rate.

In their motion, Glassell states that (1) under Section 4 (e) of the Natural Gas Act, the giving of a bond is not prerequisite to the becoming effective of a proposed rate increase; (2) that the only statutory authority for requiring a bond is that the Commission may require a bond as a condition to the collection of a proposed rate increase; (3) that their motion filed on November 3, 1960, simply required that the rate of 14.4248¢ per Mcf be made effective and did not propose that such increased rate be collected under bond or otherwise subject to refund; and (4) that their said motion was filed in accordance with the recent decision in *Associated Oil & Gas Co.* v. *FPC*, 280 F. 2d 31 (5th Cir., 1960). In addition, Glassell states that their motion filed on November 3, 1960, to make their proposed change in rate effective, complied with Section 154.102 of the Commission's Regulations under the Natural Gas Act, as it existed on that date, and that their said action recognized the dichotomy provided in Section 154.102 of the Commission's Regulations between a proposed rate increase "becoming effective" and the "collection" of such proposed rate increase; that subsequent to the filing of their motion, the Commission issued its Order No. 230 on December 5, 1960, amending Section 154.102 which order expressly provided that "(E) These amendments shall be effective on the issuance of this order." Glassell contends that it is clear that amendment of Section 154.102, as provided in

Order No. 230, does not affect their motion to make the proposed rate increase effective.

In support of their motion, Glassell contends that one of the reasons underlying their decision not to exercise their statutory right to collect the increased rate under bond or otherwise subject to refund is the fact that 68% of the proposed increase is attributable to the interest of twelve spendthrift trusts. Glassell states that there are serious legal questions as to the power of the trustees to assume any obligations to refund the increased amounts that would be collected, plus interest, and/or to incur the expense of the bond which the Commission would require. In addition, Glassell states that they did not propose to collect the increased rate under bond, and the giving of a bond is not a condition to the becoming effective of the proposed rate increase, and that they believe that the Commission's Notice dated December 16, 1960, is erroneous insofar as it would require them to file a surety bond and charge and collect the proposed rate increase subject to refund.

The Commission on December 5, 1960, issued Order No. 230 in Docket No. R-193 amending Section 154.102 of the Commission's Regulations under the Natural Gas Act. That order requires that increased rates made effective pursuant to a motion filed under Section 4 (e) of the Natural Gas Act shall be charged and collected. Glassell's assertion that Order No. 230 is inapplicable to the subject increased rate because Glassell's motion was filed prior to the issuance of Order No. 230 is clearly inapposite. Glassell's motion pertains only to their increased rate becoming effective, while Order No. 230 relates to the collection of those increased rates made effective pursuant to Section 4 of the Natural Gas Act.

Glassell's reliance on the *Associated* decision to support their position that they need not collect their increased rates is misplaced. For the *Associated* case holds only that the filing of a surety bond is not a condition precedent to

an increased rate becoming effective. Such decision has no effect on the separate and distinct right of the Commission to require respondent to collect an increased rate made effective under Section 4 of the Natural Gas Act.

The policy decision enunciated by the Commission in Order No. 230 to require collection of increased rates is clearly in accord with the filed rate doctrine as announced by the Supreme Court in the *Montana-Dakota* case.[2] The Court there held that the company "can claim no rate as a legal right which is other than the filed rate, whether fixed or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms." And as the Fourth Circuit in an earlier opinion in *Hope Natural Gas Company* v. *F.P.C.* clearly stated (134 F. 2d 287, 311):

> When rates were filed with the Commission pursuant to Section 4 (c) of the Act they become the only lawful rates which the utility could charge or accept (citing cases).

Furthermore, if independent producers were not required to collect increased rates made effective by motion, serious problems would confront not only pipeline purchasers of natural gas and, in turn, distribution company purchasers, but also the Commission itself in the administration of the Natural Gas Act.

In view of the foregoing, it is concluded that Glassell's motion should be denied.

The Commission finds:

Glassell's motion sets forth no new matters or principles of law which were not fully considered by the Commission when it issued its Notice herein on December 16, 1960, or which, now being considered, warrant any change in or modification of such Notice.

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[2] *Montana-Dakota Utilities Company* v. *Northwestern Public Service Company*, 341 U.S. 246, 251.

The Commission orders:

The motion for reconsideration and modification of the Commission's Notice issued herein on December 16, 1960, so as to delete therefrom any requirement that Glassell file a surety bond and charge and collect their increased rate subject to refund, is hereby denied.

By the Commission.

J. H. GUTRIDE
Joseph H. Gutride.
Secretary

(APPENDIX B)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; William R. Connole and Arthur Kline.

In the Matter of

CITIES SERVICE GAS COMPANY

(Issued April 3, 1959)

Order Allowing Special Rate Schedule To Take Effect

On February 20, 1959, Cities Service Gas Company (Cities Service) tendered for filing its proposed Rate Schedule X-7, a special rate schedule for short term sale and exchange of natural gas, and asks that the aforementioned schedule be allowed to take effect as of January 20, 1959.

The proposed rate schedule comprises a special agreement dated August 26, 1958, covering the sale by Cities Service to Natural Gas Pipeline Company of America for a one-year period of an average of 38,000 Mcf per day and also for the exchange of up to 25,000 Mcf per day between the companies aforesaid prior to the date the sale

commences. Cities Service will charge 15¢ per Mcf for the natural gas.

The Commission finds:

Good cause has been shown that the 30-day notice requirement provided in Section 154.22 of the Commission's Regulations under the Act be waived with respect to Cities Service's proposed Rate Schedule X-7, and that this rate schedule be allowed to take effect as of January 20, 1959.

The Commission orders:

(A) The 30-day notice requirement provided in Section 154.22 of the Commission's Regulations under the Act is waived with respect to Cities Service's Rate Schedule X-7, and this rate schedule is allowed to take effect as of January 20, 1959.

(B) The issuance of this order shall constitute full notice of the filing and publication of the rate schedule in question insofar as its applicable date is concerned.

(C) Nothing contained in this order shall be construed as a waiver of the requirements of Section 7 of the Natural Gas Act; nor shall this order be construed as constituting approval by this Commission of any service, rate, charge, or classification, or any rule, regulation, or practice affecting them; nor shall this order be deemed as recognition of any claimed contractual right or obligation affecting or relating to any service, rate, charge, or classification.

(D) This order is without prejudice to any findings or orders which have been or may be made by this Commission in any proceeding now pending or hereafter instituted by or against Cities Service Gas Company.

By the Commission.

J. H. GUTRIDE.
Joseph H. Gutride
Secretary.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

Nos. 80 and 81

PAN AMERICAN PETROLEUM CORPORATION AND TEXACO, INC.,

Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, AND THE HONORABLE ANDREW D. CHRISTIE, SITTING AS A JUDGE OF THAT COURT, AND CITIES SERVICE GAS COMPANY,

Respondents.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF COLORADO INTERSTATE GAS COMPANY AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

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v.

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Respondents.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF COLORADO INTERSTATE GAS COMPANY AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

Colorado Interstate Gas Company respectfully moves for leave to file the accompanying brief *amicus curiae* in support of respondents. The consents of the respondents, The Superior Court of the State of Delaware in and for New Castle County, The Honorable Andrew D. Christie sitting as a Judge of that Court, and Cities Service Gas Company

have been obtained. Consents of the petitioners have been refused. Notwithstanding this lack of consents, movant submits that it represents interests of its own and of others which bespeak its participation herein.

Movant is a natural gas pipeline company which purchases large quantities of gas in the Hugoton Field of Kansas. This gas, along with gas produced in other mid-continent areas, movant transports and sells in interstate commerce. Purchaser-distributors of the greatest portion of such gas sell the same for public consumption in the states of New Mexico, Colorado, Wyoming and in the metropolitan area of Chicago, Illinois.

On December 30, 1959, the Federal Power Commission approved an agreement movant made with all of such purchaser-distributors settling rate controversies effective since January 1, 1954. Part and parcel of such agreement was movant's undertaking:

> "A portion of the amounts paid by Colorado Interstate for gas from these sources may be refundable to Colorado Interstate in a presently indeterminable amount. Colorado Interstate will use every reasonable effort to secure refunds from its suppliers, including, without limitation of the generality of the foregoing, active prosecution of such judicial proceedings as well as active participation to that end in the Commission's rule-making proceeding, Docket No. R-168."

The reference therein was to the question of the refundability of the amounts paid to Kansas producers under compulsion of the minimum price order involved in the cases at bar. The Federal Power Commission in its order of December 30, 1958, directed that movant make refunds in accordance with such undertaking in the following terms:

> "(E) In the event that Colorado Interstate receives a refund from its suppliers in the Hugoton Field of

> Kansas or in the Panhandle Field of Texas of monies paid or payable for gas delivered during the period January 1, 1954 through February 4, 1958, Colorado Interstate shall make refund to its customers listed in Appendix B hereto in accordance with the settlement agreement attached hereto as Appendix A."*

Pursuant to such undertaking, and in its own interest, movant, by active prosecution of various lawsuits and settlement negotiations, had secured from its suppliers and had paid over to its customers, as of January 31, 1961, refunds totaling some $577,632. Presently pending are eight suits which movant has brought in various state courts, and federal district courts on account of diversity, to recover an additional $1,192,326. Of this amount approximately 70% would be refundable to movant's purchaser-distributors.

In one of movant's suits, an order setting pre-trial conference has been vacated pending the outcome of the instant cases. In addition, settlement negotiations in that suit and others have been deferred for the same reason.

The interest of movant, both in recoveries it may realize on its own behalf and for others, is evident from the foregoing.

Movant has followed the cases at bar through the Delaware Courts and through the certiorari process here. Based upon such knowledge, movant can in all good faith assert that it can demonstrate to this Court that suits upon equitable or common law counts are maintainable without, in any manner, disrupting the regulatory scheme envisaged by the Natural Gas Act. On the contrary, movant asserts that such suits must be maintained to prevent petitioners,

*The customers listed in Appendix B were: Citizens Utilities Company, City of Colorado Springs, City of Trinidad, Colorado-Wyoming Gas Company, Eastern Colorado Utility Company, Greeley Gas Company, Kansas-Colorado Utilities, Inc., Natural Gas Pipeline Company of America, Plateau Natural Gas Company, Public Service Company of Colorado, Pueblo Gas and Fuel Company, and Southern Union Gas Company. The reference to Appendix A is the undertaking quoted above.

and others similarly inclined, from seeking an attractive escape from legal responsibility under well established principles of law relating to contracts, quasi-contracts, and restitution. It is readily apparent that all of these matters are relevant to the Court's consideration of the cases at bar.

Respectfully submitted,

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BRIEF OF COLORADO INTERSTATE GAS COMPANY *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

Nos. 80 and 81

PAN AMERICAN PETROLEUM CORPORATION AND TEXACO, INC.,

Petitioners,

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, AND THE HONORABLE ANDREW D. CHRISTIE, SITTING AS A JUDGE OF THAT COURT, AND CITIES SERVICE GAS COMPANY

Respondents.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

BRIEF OF COLORADO INTERSTATE GAS COMPANY AS *AMICUS CURIAL* IN SUPPORT OF RESPONDENTS

The interest of Colorado Interstate Gas Company in this case is set forth in its motion to which this brief is annexed.

Questions Presented

I. Whether, in an action brought in a state court on common law claims for the restitution and recovery under contract of sums paid under compulsion of a void state administrative order, the state court must divest itself of jurisdiction where the defendants raise, as one of many defenses, a defense based on a federal statute.

II. Whether a filing with the Federal Power Commission of an independent producer rate schedule which includes:

(1) a contract setting the price for natural gas at less than 11c per Mcf, but subject to all valid orders of state regulatory bodies having jurisdiction, and

(2) a copy of the Kansas Corporation Commission's 11c minimum price order, the validity of which at the time of filing is being contested on judicial review,

results in the establishment of an effective and lawful rate of 11c per Mcf, although, upon conclusion of judicial review, the order is declared invalid for lack of jurisdiction in the Kansas Corporation Commission.

Statement of the Case

Prior to 1952 a natural gas pipeline company contracted separately with two producers for the purchase of natural gas at a wellhead price of approximately 7c per Mcf (thousand cubic feet).[1] Both contracts were made expressly subject to valid orders of regulatory bodies having jurisdiction (R. 79, 303). Effective January 1, 1954, a state commission, by order, fixed the minimum wellhead price for natural gas at 11c per Mcf (R. 262-268). Judicial review proceedings to test the validity of said order were initiated. Prior to making any payments at the ordered price, the

[1] Detailed statements of the case appear in the briefs of petitioners and respondent, Cities Service Gas Company (Cities). In the interest of simplicity, the statement herein is confined to the contract of June 16, 1949, between Texaco, Inc. (Texaco), and Cities (R. 69-81), and the contract of June 23, 1950, between Pan American Petroleum Corporation (Pan American) and Cities (R. 285-308). The reference above to a contract price of approximately 7c per Mcf is an approximation based on converting the operative contract prices stated in terms of a 14.4 p.s.i.a. pressure base to an equivalent price in terms of 14.65 p.s.i.a. and without regard to adjustments for BTU content. A detailed exposition of the effect of the Kansas order on the contract prices was pleaded in Cities' complaints (R. 54-55, 233).

pipeline company advised the producers by letter that, pending the outcome of the review proceedings, it would pay 11c per Mcf as ordered, but that such payments were involuntary and it would expect refund of overpayments if the minimum price order was judicially declared invalid (R. 153-154, 609-610). One of the producers agreed in writing that it would accept payment on that basis (R. 611). Both producers accepted and cashed monthly checks which were tendered subject to the refund letter and each of which contained on its face a statement to that effect (R. 168, 614).

On June 16, 1954, the Federal Power Commission, through regulations of general applicability, ordered the producers to file as rate schedules their contracts with the pipeline company and "all supplements or agreements amendatory thereof." 19 Fed. Reg. 4534 *et seq.*

Prior to December 1, 1954, each producer tendered to the Commission for filing a copy of its [sic] contract, as amended (R. 126, 583). The producer which had agreed in writing to make refund if the state order was declared invalid attached a copy of the state order to its filing (R. 587-598), but did not tender the letters (R. 609-611) which constitute its undertaking to make refund. The other producer did not initially tender copies of either the state order or the refund letter which it had received from the pipeline company (R. 126). In July, 1957, at the Commission's request (R. 149-150), this producer filed copies of both the state order and the refund letter (R. 152-153).

The Commission accepted the documents initially tendered by each petitioner (R. 224, 636) and so advised them by letter (R. 138-143, 640-646).

On January 20, 1958, the United States Supreme Court declared the state minimum-price order invalid. *Cities Service Gas Co. v. State Corporation Commission of Kansas*, 355 U.S. 391 (1958). The pipeline company's demand for refund was refused by the producers. Lacking diversity of citizenship, the pipeline company brought

separate suits in a state court against each of the producers for the recovery of overpayments made under the invalid state order (R. 52-59, 232-237). The claims for relief were grounded on common law counts of contract, restitution and unjust enrichment (R. 58, 236-237). In their answers (R. 59-68, 620-635) and motions for summary judgment (R. 170-171, 656-657), the producers, among other things, raised affirmative defenses and jurisdictional objections founded on the Natural Gas Act and the regulations and action of the Federal Power Commission thereunder. The state courts rejected the producers' objections to jurisdiction and held that the lawful rate for gas was the basis contract price unaffected by the void Kansas order (R. 8-21, 33-46).

SUMMARY OF ARGUMENT

I. A suit brought in a state court to recover sums paid under the compulsion of a void state administrative order is not a suit to enforce a liability or duty created by the Natural Gas Act.

The reach of the judicial power in cases arising under the laws of the United States is restricted to the enforcement of rights which derive in the first instance from federal law. Section 22 of the Natural Gas Act does not broaden the established limits of federal jurisdiction.

Cities' claims below are based on common law theories of contract and quasi-contract, both of which are available under *Natural Gas Pipe Line Company of America v. Harrington*, 246 F.2d 915 (5th Cir. 1957), *cert. denied*, 356 U.S. 957 (1958). The petitioners raise a defense based on the Natural Gas Act and compile to it the erroneous conclusion that to meet that defense, of necessity, requires the assertion of a federally created right. But the well established rule is to the contrary. To the plaintiff alone goes the choice of whether to lay its claim on common law rights or on federal rights. *Luckett v. Delpark, Inc.*, 270 U.S. 496 (1926); *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 252, and dissent at 259

(1951). The interposition of a defense based on the Act did not change the nature of Cities' claims from nonfederal to federal. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667 (1950). Nor does the mere existence of the Act abrogate rights arising under express or implied contracts. Under the principles announced in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), it is clear that contractual rights are not extinguished by the Act. The recent decision of this Court in *Sunray Mid-Continent Oil Co. v. Federal Power Commission*, 364 U.S. 137 (1960), establishes that contractual rights and duties exist independently of, and side by side with, the limited rights and duties imposed by the Act. The vindication of rights arising out of common law has not been placed with the federal courts by Section 22.

II. The state courts have not collaterally revised an order of the Federal Power Commission.

The case at bar is not factually parallel with *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246 (1951). Petitioners' misplaced reliance thereon is but a transparent attempt to escape their legal obligations and refund liabilities behind a smokescreen purportedly raised in behalf of administrative uniformity.

Under the principles announced in *Natural Gas Pipe Line Company of America v. Harrington*, 246 F. 2d 915 (5th Cir. 1957), *cert. denied*, 356 U.S. 957 (1958), the right to recover overpayments from January 1, 1954, to at least July 16, 1954, is unassailable. Such rights, whether founded on contract or quasi-contract, were not terminated by the issuance of procedural regulations governing the filing of rate schedules by independent producers. The Commission expressly announced that the regulations were not intended to effect substantive changes in existing relationships between producers and transmission companies. 19 Fed. Reg. 8807.

The filing of rate schedules by the petitioners did not result in the establishment of an unconditional 11¢ rate as

they allege. The distinction between producer "contract filings" and pipeline "tariff filings" establishes that the Commission did not accept an 11c tariff rate, but accepted only the documents tendered. From these documents the applicable rate is to be determined. Any right to an 11c rate depends on the effectiveness of the Kansas order to modify the basic contracts between Cities and the petitioners. Since the Kansas order was void *ab initio*, the determinable filed rates were the contract rates and no others. The state courts have not collaterally revised a filed rate and have not "enforced" a filed rate. Within the authority of *Great Northern Ry. Co. v. Merchants Elevator Co.*, 259 U.S. 285 (1922), the courts have examined the petitioners' rate schedules and have correctly determined that the rate provided for therein is the contract price, rather than the price purportedly set by a void order of the Kansas Corporation Commission.

ARGUMENT

I. The causes of action below for recovery of sums paid under compulsion of a void state price order were not actions to enforce a liability or duty created by the Natural Gas Act.

A. Constitutional and Statutory Provisions Involved.

Section 22 of the Natural Gas Act, 52 Stat. 833, 15 U.S.C. § 717u, is set out in the appendices to petitioners' briefs. In connection with Section 22 of Act, the following portion of U.S. Const. Art. III, § 2 is pertinent:

> "The judicial Power shall extend to all Cases in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; . . ."

B. Delineating the Area of Jurisdiction in Cases Arising Under the Laws of the United States.

1. A brief historical perspective revealing the restrictive nature of federal question jurisdiction.

The constitutional grant of "judicial Power" defines the upper limit of what has come to be popularly called "federal question" jurisdiction. The statutory implementation of that jurisdictional grant may not exceed, but need not be coextensive with, the constitutional limit. The statutory development of federal question jurisdiction exhibits the historical expansion and contraction of the jurisdiction of federal questions within the limits established by the Constitution.

Under the First Judiciary Act, Act of September 24, 1789, 1 Stat. 73, private litigants had no right of original entry to the federal courts for the vindication of federally created rights. Original resort was to the state tribunals subject to limited review by the United States Supreme Court "where is drawn in question" the validity or construction of any statute of the United States. Until after the Civil War, private litigants, in the absence of diversity of citizenship, had access to the federal courts only in exceptional cases of a peculiarly federal nature.[2] The period following the Civil War was a period of expansion of federal question jurisdiction[3] culminating in the Judiciary Act of 1875, Act of March 3, 1875, 18 Stat. 470. It was this act which "first entrusted to the lower federal courts wide jurisdiction in cases 'arising' under this Constitution, the Laws of the United States, and Treaties.' U.S. Const. Art. III, § 2." *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 673 (1950). Since the passage of the Act, Congress has in-

[2] E.g., Revocation of wrongfully secured patents, Act of April 10, 1790, 1 Stat. 109; patent infringement, Act of Feb. 21, 1793, 1 Stat. 318; veterans' disability pensions, Act of March 23, 1792, 1 Stat. 243.

[3] E.g., The various Civil Rights Acts, Act of April 9, 1866, 14 Stat. 27; Act of May 31, 1870, 16 Stat. 140; Act of Feb. 28, 1871, 16 Stat. 433; Act of April 20, 1871, 17 Stat. 13; Act of March 1, 1875, 18 Stat. 335; suits against national banks, Act of June 3, 1864, 13 Stat. 99; removal jurisdiction of suits against corporations organized under a law of the United States, Act of July 27, 1868, 15 Stat. 226; treble damage suits for violation of Pacific Railroads Act, Act of June 20, 1874, 18 Stat. 111.

corporated both concurrent and exclusive federal jurisdictional provisions in many of its substantive statutes[4] without regard to whether or not such jurisdiction was already existent under the Judicial Code (28 U.S.C. §§ 1331, 1359). Even though the number of statutes implementing the Constitutional "judicial Power" has gradually multiplied, access to the federal courts thereunder has been restricted under well established doctrines as to when a case does or does not "arise" under federal law.

2. An action does not arise under federal law if the federal question enters only by way of defense.

An action does not arise under federal law if the federal question enters only by way of defense even though artful pleading by the plaintiff anticipates a defense based on the federal law. *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908); *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667 (1950). And, if the source of the right sought to be enforced is not in the first instance from federal law, there is no federal question even though enforcement of the rights in question may be prohibited by some act of Congress or may be specifically permitted by some act of Congress. *Gully v. First National Bank in Meridian*, 299 U.S. 109 (1936).

That the statutory grant of federal jurisdiction is exclusive rather than concurrent does not change the fact that an action, founded in law on contract or in equity on unjust enrichment, is not an action arising under federal law simply because a federally created right may be an ingredient of the legal position asserted by the defendant.

[4] See reviser's notes to 28 U.S.C. § 1331.

[5] 28 U.S.C. § 1338(a) places exclusive jurisdiction in the federal courts of any civil action arising under federal patent and copyright laws. But an action on a contract, the subject of which is a patent, is cognizable in the state courts. Jurisdiction of state courts upheld in: *Pratt v. Paris Gas Light & Coke Co.*, 168 U.S. 255 (1897), action by patentee for purchase price of patented machine wherein was raised a defense that plaintiff's patent was void and that use of machine would infringe another patent; *New Marshall Engine Co. v. Marshall Engine Co.*, 223 U.S. 473 (1912).

The decision in *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667 (1950) clearly illustrates the distinction made, for jurisdictional purposes, between rights which arise under the Natural Gas Act and rights which arise under contract, where the enforcement of the contract right is dependent upon a construction of the Act and certain action of the Federal Power Commission pursuant thereto. In the *Skelly* case, plaintiffs invoked the Declaratory Judgment Act, 48 Stat. 955, 28 U.S.C. § 2201, seeking a declaration that certain gas purchase contracts between Phillips and the petitioners were binding and effective. As to the defendants with whom diversity was lacking, federal jurisdiction had been premised on the allegation that whether or not a certificate of public convenience and necessity had been issued by the Federal Power Commission to Michigan-Wisconsin Pipe Line Company presented a federal question. The federally created certificate right was an essential ingredient of the plaintiff's claim since the contracts before the Court allowed termination by the petitioners in the absence of such certificate. As to parties not of diverse citizenship, the Court held that there was present no federal right which provided a foundation for resort to the federal courts, reasoning:

---

suit for specific performance of contract to assign a patent when issued coupled with a bill for an injunction against maufacture and sale under patent; *Becher v. Contoure Laboratories, Inc.*, 279 U.S. 388 (1929), suit to have patentee declared trustee ex maleficio of a patent and to compel its assignment to plaintiff; *Friedman v. Washburn Co.*, 145 F.2d 715 (7th Cir. 1944), diversity jurisdiction, court rejected prayer for assignment but held a case had been stated for accounting and damages not under patent laws but on equity principle of unjust enrichment. Cf. *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22 (1913). See also the cases involving land rights where there is no federal question even though the source of title is a United States Patent. E.g., *Shoshone Mining Co. v. Rutter*, 177 U.S. 505 (1900), adverse suit to determine patent applicant's right to possession; *Joy v. St. Louis*, 201 U.S. 332 (1906), ejectment to secure to owner under a patent possession of land formed by accretion after issuance of patent; *Marshall v. Desert Properties Co.*, 103 F. 2d 551 (9th Cir. 1939), *cert. denied*, 308 U.S. 563 (1939), quiet title action by patent holder. Cf. *Hopkins v. Walker*, 244 U.S. 486 (1917).

> "If Phillips sought damages from petitioners or specific performance of their contracts, it could not bring suit in a United States District Court on the theory that it was asserting a federal right. And for the simple reason that such a suit would 'arise' under the State law governing the contracts. Whatever federal claim Phillips may be able to urge would in any event be injected into the case only in anticipation of a defense to be asserted by petitioners." 399 U.S. at 672.

The Court commented pointedly on the restrictive nature of jurisdiction founded on federal rights, saying:

> ". . . With exceptions not now relevant Congress has narrowed the opportunities for entrance into the federal courts, and this Court has been more careful than in earlier days in enforcing these jurisdictional limitations. See *Gully v. First National Bank*, supra at 113.
>
> "To be observant of these restrictions is not to indulge in formalism or sterile technicality. It would turn into the federal courts a vast current of litigation indubitably arising under State law, in the sense that the right to be vindicated was State-created, if a suit for a declaration of rights could be brought into the federal courts merely because an anticipated defense derived from federal law." 339 U.S. at 673.

C. The Case at Bar does not Arise under Federal Law.

1. Cities seeks relief in money damages, at law under contract or, alternatively, in equity under restitution.

In determining whether or not a given case arises under federal law, the plaintiff's complaint is the focal point of the inquiry. *Skelly Oil Co. v. Phillips Petroleum Co.*, *supra*, 339 U.S. at 672 and cases cited. The complaints filed by Cities in the case at bar do not assert a right to recovery founded on

federal law in general or the Natural Gas Act in particular. Said complaints simply seek to recoup amounts paid by Cities in excess of agreed-upon prices. Quite obviously relying on the teaching of *Natural Gas Pipeline Company of America v. Harrington*, 246 F.2d 915 (5th Cir. 1957), *cert. denied*, 356 U.S. 957 (1958), Cities pleaded alternate grounds for recovery (R. 52-59, 232-237). It was asserted that by receiving and retaining payments pursuant to the letter of January 21, 1954, petitioners contracted to refund overpayments as, if and when the Kansas order was judicially declared invalid. Alternatively, it was asserted that overpayments were made involuntarily under such duress as to allow recovery on a restitution theory (R. 58, 236-237).[6] The Natural Gas Act apart, there is no question of the fact that Cities sought vindication of certain rights which are not federally created. The fact that, under the circumstances of the case at bar, Cities might have been able to assert a right arising out of the Act does not in any sense diminish its coexistent and independent right to rely on common law grounds for recovery. It is well settled that, where the same circumstances give rise to both common law and federal rights, the choice of which set of rights to assert in a cause of action rests exclusively with the plaintiff. *Luckett v. Delpark, Inc.*, 270 U.S. 496 (1926); *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 252, and dissenting opinion at 259 (1951).

2. The Natural Gas Act enters the case only by way of defense.

Petitioners answered the complaints filed by Cities pleading, among other things, that after June 7, 1954 (or after July 16, 1954), the only lawful rates were the rates filed with the Federal Power Commission (R. 59-68, 620-635). This would seem to be an assertion only of the estab-

[6] The right to restitution of overpayments made under an administrative rate order later judicially declared invalid is well established. *Arkadelphia Milling Co. v. St. Louis Southwestern Ry. Co.*, 249 U.S. 134 (1919); *Baltimore & O.R.R. Co. v. United States*, 279 U.S. 781 (1929).

lished principle that, where the rate in a private contract and the rate on file with the regulatory authority differ in amount, the filed rate prevails. This is no more than the assertion of a defense based on federal law i.e., recovery is precluded because a new and different filed rate (11c) has superseded the old contract rate. But, for jurisdictional purposes, the petitioners claim much more. Petitioners assert that, under the Natural Gas Act, the contract has lost all vitality as a contract, *ergo*, even though the contract and the filed rate be identical, petitioners have no contractual or common law obligations toward Cities. By this reasoning, petitioners erroneously conclude that the enforcement provisions of the Act have been substituted for the well-defined common law rights to recover, on contract or quasi-contract, sums paid under compulsion and duress. Cities was and is seeking recovery on an affirmative obligation of the petitioners to make refund, which arises out of contract, express or implied, not out of any liability or duty created by the Natural Gas Act. The source of Cities' right to recovery does not derive in the first instance from federal law. The Act enters the case only by way of defense to Cities' common law claims.

3. The Natural Gas Act does not substitute federal rights for contract rights; it preserves the integrity of contracts.

Implicit in petitioners' jurisdictional arguments is the contention that the Natural Gas Act has extinguished contract rights, as such, whether express or implied. The contrary is true. Contracts between producers and transmission companies, even though filed with the Federal Power Commission, remain in force and effect unless and until changed or modified by the Commission pursuant to its authority under the Act. Similarly, the common law rights and obligations of the contracting parties which exist or may later arise by operation of law remain viable. Such rights and obligations are not extinguished by the Act nor does the Act substitute federally created rights therefor.

This Court is acquainted with the myriad of obligations contained within the four corners of "a full-fledged contract containing all the terms defining the complete relationship (between producer and transmission company)." *Texas Gas Transmission Corp. v. Shell Oil Co.*, 363 U.S. 263, 273 (1960). In *Shell* this Court examined such a contract and, after quoting the introductory language thereof, reported:

> "What follows are the nine Articles which detail the many aspects of the parties' relationship for the 20-year term of the contract. The Articles are captioned 'Sale of Gas,' 'Quantity of Gas,' 'Pressure Decline,' 'Point of Delivery,' 'Warranty of Title to Gas,' 'Prices,' 'Arbitration,' 'Term of Contract' and 'Miscellaneous.' In addition an exhibit made part of the contract deals with such matters as 'Quality of Gas,' 'Measurements,' 'Billing and Payment,' 'Regulatory Bodies' and 'Force Majeure.'" 363 U.S. at 273.

Under petitioners' theory, a duty or liability arising under or involving, no matter how remotely, any of the quoted subjects is a creation solely of the Natural Gas Act and thus enforceable in the federal courts exclusively. Petitioners cannot limit their "created by" theory to the price provisions of such a contract for the simple reason that each and every provision therein does, in some manner, "affect or relate to such rates, charges, classifications, and services." § 4(c), Natural Gas Act.

The court below rejected petitioners' contentions, citing *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) for the proposition that the Natural Gas Act does not abrogate private rate contracts as such. That was clearly a proper reading of the *Mobile* case. An examination of the opinion in *Mobile* establishes that this Court was not concerned with changes in rates which derived their binding effect from the Natural Gas Act but with rates which were binding because of valid contracts. The contract in *Mobile* had been filed with the Federal Power Commission and as the Court noted "... with the approval

of the Commission, became a part of United's filed schedules of rates and contracts." 350 U.S. at 336. Nevertheless, Mobile's right to pay only the contract rate unchanged by any unilateral action on the part of United was a right arising under its contract, not a right created by the Natural Gas Act. This was made unmistakably clear in the case which followed *Mobile* to this court, *United Gas Pipe Line Co. v. Memphis Light, Gas and Water Division*, 358 U.S. 103 (1958). The distinction which prevented a unilateral rate change in *Mobile* while allowing it in *Memphis* was a distinction based solely on the different contractual obligations of the parties concerned. In *Mobile* the right to change rates unilaterally "had been bargained away by contract," while in *Memphis* the seller was "contractually" free to change its rate from time to time. 358 U.S. at 110-111.

Petitioners' contention that contract rates, as such, do not survive the Natural Gas Act is erroneous. *Mobile* is but a recent affirmation of the established principle that contracts not outlawed but merely subjected to regulatory legislation remain in full force and effect.[7] *Mobile* simply applied such principles to the specific question of whether a natural gas company furnishing gas under a long-term contract "may, without the consent of the distributing company, change the rate specified in the *contract.*"[8] 350 U.S. at 334. The Court held that the Act does not give companies "the right to change their rate *contracts* by their own unilateral action", 350 U.S. at 337, a holding which it characterized as "preserving the integrity of *contracts.*" 350 U.S. at 344.

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[7] See *Wichita R. & Light Co. v. Public Utilities Commission*, 260 U.S. 48 (1922); *Southern Utilities Co. v. City of Palatka*, 268 U.S. 232 (1925); *Colorado Interstate Gas Co. v. Federal Power Commission*, 142 F. 2d 943 (10th Cir. 1944) *aff'd.* 324 U.S. 581 (1944).

[8] In this brief emphasis has been supplied unless otherwise indicated.

4. The producer-transmission company relationship is recognized as a dichotomy, composed in part of rights and duties arising under contract, and in part of rights and duties arising under the Natural Gas Act.

The survival of contract rights as such is clearly illustrated by the cases which have lately followed in the wake of *Mobile*. The recent decision in *Sunray Mid-Continent Oil Co. v. Federal Power Commission*, 364 U.S. 137 (1960), clearly points out that the producer-transmission company relationship is dichotomous, composed in varying parts of obligations imposed by contract and obligations imposed by the Natural Gas Act. In that case a producer had applied to the Federal Power Commission for a certificate of public convenience and necessity limited in time to the duration of its contract with the transmission company. The Commission tendered instead a certificate without time limitation which the producer accepted reserving its right to urge, on judicial review, objections to the certificate's unlimited nature. In sustaining the Commission this Court took pains to distinguish between the obligations of the producer which arise out of its contract and those which arise out of the Natural Gas Act. The Court stated the distinction as follows:

> "The Commission's practice supports its authority here in terms of § 7(e). It has long drawn a distinction between the underlying service to the public a natural gas company performs and the specific manifestation—the contractual relationship—which that service takes at a given moment. . . .This position of the Power Commission is evidence that the service in which the producer engages is distinct from the contract which regulates his relationship with the transmission company in performing the service." 364 U.S. at 152-153.

The Court then specifically dealt with the interrelation between contract obligations as such and Natural Gas Act obligations as such. After recognizing that "the scheme of

the Act was one which built the regulatory system on a foundation of private contracts", 364 U.S. at 154, the Court pointed out how one obligation—the duty to deliver gas to the transmission company—was an obligation arising out of the contract during its term and that, only after the contract expires, can that duty be said to arise under the Natural Gas Act. The Court said:

> "It is apparent that the Commission's order in no way violated the integrity of petitioner's contract with United. During its term, both parties are bound by it to the same extent as any members of this regulated industry. When it expires, petitioner, to be sure, will be under an obligation to continue to deliver gas to United on the latter's request unless it can justify an abandonment before the Commission; but we do not see how this in any way disturbs the integrity of the contract during its term. The obligation that petitioner will be under after the contract term will not be one imposed by contract but by the Act. It will be free then, as it was not free during the contract term under the contract here in question, to make rate changes under § 4 without United's consent . . . .
>
> "The short of the matter is that *Mobile* recognized that there were two sources of price and supply stability inherent in the regulatory system established by the Natural Gas Act—the provisions of private contracts and the public regulatory power . . . ." 364 U.S. at 155.

The extent to which a contract as such governs the relationship between a producer and a transmission company was also graphically illustrated by this Court's recent decision in *Texas Gas Transmission Corp. v. Shell Oil Co.*, 363 U.S. 263 (1960). The question there presented was whether or not a "favored-nations" clause in the gas purchase contract between Texas Gas and Shell had become operative so as to increase the contract price prior to June 7, 1954. Shell

had alleged that a price adjustment in a 1943 contract between Texas Gas and Atlantic Refining Company had "triggered" the "favored nation" clause in the Texas Gas-Shell contract. This Court held that the "favored nation" clause was dependent on a *new* contract being entered; that the price adjustment between Texas Gas and Atlantic was not a new contract but was "simply executory of the (1943) contract between the parties" 363 U.S. at 272; and that, therefore the "favored nation" clause in the Texas Gas-Shell contract had not been activated. The presiding examiner, the Commission (18 F.P.C. 617), the Court of Appeals for the Third Circuit (263 F.2d 223) and this Court all made their respective determinations on the basis of the applicability of principles of contract interpretation, not on the basis of statutory construction of the Natural Gas Act. Moreover, this Court remanded the case to the Court of Appeals with directions that that Court determine whether the question of enforceability of the 1943 Texas Gas-Atlantic contract was material, and, if found to be material, to determine the question of enforceability, presumably "under applicable state law" 363 U.S. at 276-277.[9]

Thus, a private contract between a producer and a transmission company is neither "outlawed" nor "legalized" by the Natural Gas Act. True, under the procedures prescribed in the Act, the Commission does have paramount power to modify private contracts when the public interest so requires, but, unless and until so modified, a contract remains binding and enforceable upon the parties as a contract. The Act in and of itself did not abolish or change the nature of

[9] The extensive litigation involving Pennsylvania Water & Power Co. is a prior example of the juxtaposition of duties and liabilities in a given situation which arise variously under private contract, federal regulatory and anti-trust law, and state corporation law. Cf *Pennsylvania Water & P. Co. v. Federal Power Commission*, 343 U.S. 414 (1952); *Pennsylvania W. & P. Co. v. Consolidated G., E., L. & P. Co.*, 184 F.2d 552 (4th Cir. 1950), *cert. denied*, 340 U.S. 906 (1950), *supplemental opinion* 186 F.2d 934 (1951); *Consolidated Gas, E., L. & P. Co. v. Pennsylvania W. & P. Co.*, 194 F.2d 89 (4th Cir. 1952), *cert. denied*, 343 U.S. 963 (1952).

existing contractual or common law rights. To once again use the words of *Mobile*, the Act simply "affords a reasonable accommodation between the conflicting interest of contract stability on the one hand and public regulation on the other", 350 U.S. at 344. In sum, the petitioners' position is that contractual and even quasi-contractual obligations not abolished by the Act are necessarily "created by" it. But the "reasonable accommodation" envisioned in *Mobile* does not demand that existing jurisdictional limitations be so strained by committing to the exclusive control of the federal courts all cases involving sales covered by gas purchase contracts between producer and transmission company.

It is patently clear then, from earlier decisions of this Court, that the filing of producer-transmission company contracts with the Federal Power Commission under the provisions of the Natural Gas Act does not mark the demise of such contracts, nor the extinguishment of legal and equitable rights otherwise accruing to the parties with respect to operations under, or related to, such contracts. The suits instituted by Cities for recovery of sums paid in excess of its contract price are not suits to enforce a liability or duty created by the Natural Gas Act. Section 22 of the Act does not divest the state courts of jurisdiction.

H. The state court has not collaterally reviewed and set aside a filed rate.

A. The *Montana-Dakota* case Does Not Aid the Petitioners.

Petitioners see in *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246 (1951), an attractive escape from the liability to make refund which arises out of well established principles of law relating to contracts, quasi-contracts and restitution. Against the background of *Montana-Dakota* petitioners erect a mass of assorted horrors which are said to lead to the inevitable destruction of the federal regulatory structure. *Montana-Dakota* does not support petitioners' thesis in the case at bar, nor would the affirmance of the courts below cause the collapse of federal regulation.

In *Montana-Dakota* the issue which the plaintiff attempted to raise was the inapplicability, due to unreasonableness, of rates set forth in a contract on file with the Federal Power Commission. 341 U.S. at 248. In the case at bar there is no issue as to reasonableness or unreasonableness; and it is the petitioner-defendants who raise an issue concerning the inapplicability of rates set forth in a contract on file with the Federal Power Commission.

The claim in *Montana-Dakota* was for vindication of a "federally conferred right to reasonable rates and charges". 341 U.S. at 249. Allegations of fraud were not the basis of the claim but were the excuse offered by the plaintiff "to escape the limitations of the Power Commission remedies". 341 U.S. at 250. Moreover, the Court pointed out the fact that, under the factual circumstances of the case, the plaintiff probably did not have a cause of action in fraud, independent of the Power Act, because "the issue of reasonableness of the charges is not one clearly severable from the issues of liability, for the acts charged do not amount to fraud unless there has been an unreasonable charge." 341 U.S. at 253-4. *Montana-Dakota* is opposite rather than ap-

posite to the case at bar. Here, Cities claims are for vindication of well established common law rights which exist independently of the Natural Gas Act. The petitioners bring in the matter of filed rates as a bar to recovery by Cities on the premise that the filed rate "can be no other" than what petitioners say it is. In succeeding paragraphs it will be demonstrated that the filed rate defense is not a bar to recovery because the filed rate is not 11c, petitioners' insistence on 11c notwithstanding.

Finally, petitioners' fear, that survival of the federal regulatory scheme is imperiled unless they are allowed to be unjustly enriched, is groundless. Retroactive payments and refunds pursuant to contracts and letter agreements between producers and transmission companies have been made heretofore without, in any way, affecting the repose of the natural gas industry. *Phillips Petroleum Co. v. Federal Power Commission*, 227 F.2d 470 (10th Cir. 1955), *cert. denied*, 350 U.S. 1005 (1956); *Kerr-McGee Oil Industries, Inc. v. Federal Power Commission*, 260 F.2d 602 (10th Cir. 1958).[10]

In the case at bar the prevention of petitioners' unjust enrichment will serve, not disserve the public interest, since Cities' jurisdictional customers will be the immediate beneficiaries of the major portion of any refunds recovered. *Re Cities Service Gas Co.*, 15 F.P.C. 1448, 1453-58 (1956).[11]

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[10] Both cases involved contracts in which the prices payable to producers were tied into the resale rates of the purchasing transmission companies. The resale rates were not determined until after June 7, 1954, but covered periods beginning in 1952 and 1953. In *Phillips* a refund was due from the producer to the transmission company because the latter's application for increase was only partially allowed. The court noted that refund had been made and did not even intimate that this was improper. In *Kerr-McGee* an additional payment was due the producer. Payment had been made for all periods up to June 7, 1954, and the gathering company stood ready to make payment for subsequent periods. In 1956, the producer filed a motion to correct its billing statement retroactive to June 7, 1954 to reflect the proportional contract increase due to final determination of the transmission company's resale rates. The court held that the Commission erred in denying the motion.

[11] See *infra*, p. 38.

B. Cities' Right to Restitution and Refund for the Period January 1, 1954, to July 16, 1954, is Unassailable.

Prior to January 1, 1954, the price for gas sold by petitioners to Cities was governed solely by the pricing provisions set forth in the gas purchase contracts. This price was somewhat below 11c per Mcf. (R. 74-75, 298).

On January 1, 1954, the Kansas minimum price of 11c per Mcf became effective by order of the Kansas Corporation Commission. Putting aside the effect of the order *per se*, the contract price would, on that date, have been advanced to 11c per Mcf by operation of the contractual provision which expressly made the contracts subject to valid orders of regulatory bodies having jurisdiction, *provided* that one condition was met. The condition, of course, was that the order be valid.

By letter, Cities advised the petitioners that it would comply with the order pending final judicial determination of its validity. Thus was provided a mode through which the basic contractual relationship would continue pending judicial review, that is, until the contract price was ultimately determined by a final judicial decision on the Kansas order, Cities would make interim payments at the rate of 11c per Mcf. Thus the letter agreements are "merely executory of the contract between the parties" and, together with the basic contracts, in each case "are all integrated parts of one contract". *Phillips Petroleum Co. v. Federal Power Commission*, 227 F. 2d 470, 475, 476 (10th Cir. 1955); *cert. denied* 350 U.S. 1005 (1956); *Texas Gas Transmission Corp. v. Shell Oil Co.*, 363 U.S. 263 (1960); Cf. *Pan American Petroleum Corp. v. Federal Power Commission*,——F. 2d—— (10th Cir., January 31, 1961, No. 6324).

The Kansas order was ultimately declared void *ab initio*. *Cities Service Gas Co. v. State Corporation Commission of Kansas*, 355 U.S. 391 (1958); *Cities Service Gas Co. v. State Corporation Commission of Kansas*, 184 Kan. 540, 337 P. 2d

640 (1959), *cert. denied*, 361 U.S. 836 (1959). Thus the contract price had never been advanced to 11c per Mcf.

It is clear that, under conventional doctrines of restitution, Cities was entitled to recover the difference between the contract rate for gas purchased from the petitioners and the price paid under the invalid Kansas order at least from January 1, 1954, to July 16, 1954. *Natural Gas Pipe Line Company of America v. Harrington*, 246 F. 2d 915 (5th Cir. 1957), *cert. denied*, 356 U.S. 957 (1958). The *Harrington* case awarded restitution based on the invalidity of the Oklahoma minimum price order. The restitution period in that case began on September 10, 1952, and continued to July 1, 1954. No event has taken place which could cut off Cities' right to restitution prior to July 1, 1954.

It remains to be seen whether or not Cities' right to restitution was aborted on or after July 16, 1954, by Federal Power Commission interdict.

C. The Producer Regulations Were Procedural Only. The Issuance Thereof Did Not Terminate Cities' Refund Rights As Of July 16, 1954.

In the *Harrington* case, *supra*, it is clear that the right to restitution which Cities asserts does not end on June 7, 1954, as a consequence of this Court's decision in *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954), issued that day. One of the consequences which did flow from the *Phillips* decision was the issuance, on July 16, 1954, of Federal Power Commission Order No. 174, 19 Fed. Reg. 4534 *et seq.*, prescribing regulations for the filing of rate schedules and certificate applications by independent producers.[12]

The regulations were procedural only and had no effect whatsoever on the substantive rights of parties affected

[12] Order No. 174 was superseded by Order No. 174-A, 19 Fed. Reg. 5081 *et seq.* Order No. 174-A was modified by an order issued September 24, 1954, which extended certain filing dates from October 1, 1954, to December 1, 1954, 19 Fed. Reg. 6301, and was further amended by Order No. 174-B, issued December 17, 1954, 19 Fed. Reg. 8807 *et seq.* The producer regulations now appear at 18 C.F.R. § 154.91 *et seq.*

thereby. In its opinion filed with Order No. 174-B, the Commission stated:

> "Many of the petitions for rehearing, although objecting to the lack of notice when the rules were originally adopted, recommended changes which would be of a distinctively substantive nature. Substantive rules, however, do not appear desirable in connection with the filings with which these rules are concerned and it is the intention of the Commission to relate these rules strictly to procedural matters." 19 Fed. Reg. 8807.

Commissioners Smith and Steuck, in a concurring opinion, characterized the entire series of Orders Nos. 174, 174-A and 174-B as "a properly pragmatic approach to the problems entailed in its (Commission's) newly defined jurisdiction in the areas of production and gathering." Fed. Reg. Doc. 54-10160. Thus the Commission documented its intention to limit the scope of the regulations to those procedural matters necessary to initiate the regulatory process. The mere issuance of the regulations then, did not change in any manner the contractual relationship between Cities and the petitioners, much less establish a cut-off date as respects Cities' common law rights to restitution.

D. The Commission Took No Action Under the Regulations Which Terminated or Extinguished Cities' Refund Rights.

1. The basic distinction between producer contract filings and pipeline tariff filings rebuts the contention that petitioners filed a stated and unconditional rate of 11c.

In point of time the producer regulations were "applicable to transactions and operations conducted on and after June 7, 1954, the date of the Supreme Court decision in the Phillips Petroleum Company case." 19 Fed. Reg. 4535. On June 7, 1954, the transaction and operation being conducted between Cities and each of the petitioners was the

purchase and sale of natural gas at a price level which was dependent upon the validity or invalidity of the Kansas minimum price order. The petitioners, Pan American expressly in writing, and Texaco by its conduct, had agreed to refund to Cities the difference between contract price and the 11c interim price being paid pending judicial review of the Kansas order. The petitioners now assert that their compliance with the producer regulations not only excused their performance of the agreements to make refund, while at the same time extinguishing Cities' right to judicially enforce such agreements, but also effectively terminated Cities' common law rights to restitution of payments made under the compulsion of a void administrative order.

The process by which petitioners seek to pervert the federal regulatory process to suit their purposes begins with the assertion that the Commission accepted for filing a stated rate of 11c per Mcf. This assertion completely ignores the fundamental difference between a pipeline rate schedule and an independent producer rate schedule. The former is a flat statement of an applicable rate in terms of cents per unit, 18 C.F.R. §§ 154.11, 154.38(d). The latter consists of "the basic contract and all supplements or agreements amendatory thereof, . . . showing . . . the rates and charges, terms, conditions, classifications, practices, rules and regulations affecting or relating to such rates or charges." 18 C.F.R. § 154.93. There thus exists a basic distinction between a pipeline "tariff filing" and a producer "contract filing".[1]

[1] The distinction between a "contract filing" and a "tariff filing" has been presented to, and considered by, this Court, in a previous case. See *United Gas Pipe Line Co. v. Memphis Light, Gas and Water Division*, 358 U.S. 103, 115 note 8 (1958); and Brief for Federal Power Commission in the *Memphis* case at pp. 3-6 and 89 note 56. In directing independent producers to make a "contract filing" the Commission was doing exactly what it had originally done with respect to pipeline rate schedules. Compare: 18 C.F.R. § 154.93; and § 54.1, Provisional Regulations Under the Natural Gas Act, 18 C.F.R. § 54.1 (1938 Supp.). For a history of the conversion of pipeline rate forms from contracts to tariffs, see 13 Fed. Reg. 6371-2.

Each of the petitioners, in essence, contends that it tendered and the Commission accepted a stated *tariff* rate of 11c per Mcf applicable to the sale of gas to Cities. This is simply not so. Actually, each tendered certain documents which the Commission accepted as rate schedules. Regardless of what statements the petitioners claim to have made concerning an unconditional 11c rate, it is clear that the only "applicable and effective rate . . . under the rate schedule, was to be determined by the terms of the contract . . . even though the rate payable under the contract was contingent . . . and the price actually being paid by the purchaser to the seller on June 7, 1954, was not the applicable and effective rate on that date under the rate schedule." *Phillips Petroleum Co. v. Federal Power Commission*, 258 F. 2d 906, 917 (10th Cir. 1958).

Substantively, the case at bar is strikingly parallel. The rate payable to petitioners by Cities under its contracts was contingent upon the validity of the Kansas order, and had been so contingent since January 1, 1954. When this Court struck down the Kansas order it was determined that the rate stated in the contract was not and had never been legally modified by that order. *Cities Service Gas Co. v. Federal Power Commission*, 255 F. 2d 860 (10th Cir. 1958), *cert. denied*, 358 U.S. 837 (1958).

Despite the fact that producer rate schedules are composed of contracts from which the applicable rate is to be determined, petitioners vigorously assert that they tendered a tariff statement of 11c per Mcf and that the Commission construed, established and accepted an effective and unconditional 11c rate. The Commission's actions negate any inference that it so modified the contractual relationship between the parties and, in the bargain, terminated both the petitioners' obligations to make refund and Cities' rights to restitution of interim payments made under the Kansas order.

The petitioners tendered certain documents to the Commission for filing. The Commission accepted not a stated

rate of 11c per Mcf, but only the tendered documents which it characterized as "rate filings" and which it identified under the caption "Description of Document," (R. 138-143, 640-646). The Commission did not undertake to construe the legal effect of the described documents. The petitioners were advised that acceptance for filing was not to be construed as approval of any "practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith". (R. 139, 640-641).

According to petitioners the acceptance letter was a Commission order which established an 11c rate irrespective of the invalidity of the Kansas order. Further, and again according to petitioners, the acceptance letter completely abrogated the refund obligations expressly undertaken by Pan American and impliedly undertaken by Texaco. Finally, straining this apparently non-committal document to the limit, petitioners insist that it also aborted Cities' common law right to restitution which would otherwise have been born on January 20, 1958. Ingenious though these arguments be, it is small wonder that the Delaware courts have refused to accept the petitioners' eclectic view of the consequences of federal regulation. The rate schedules of the petitioners do not establish an unconditional 11c rate. The Kansas order was accepted only for what it might be worth as a valid order. The invalidity thereof having been established *ab initio*, the effective filed rate can only be the rate set forth in the basic contracts.

2. The mere filing of documents with the Federal Power Commission does not insulate them from examination by a state court.

Petitioners, in a variety of interrelated arguments, assert that the Delaware courts have collaterally reviewed and reversed an order of the Federal Power Commission. These arguments are all premised on the erroneous contention that their rate filings were, in form, tariffs stating an unconditional rate of 11c. An examination of the filings reveals

otherwise. In this connection let one contention of the petitioners be put to rest, namely, the implication that documents once filed with the Federal Power Commission are thereby insulated from judicial examination. No court (other than a Court of Appeals) they argue has the right to an interpretive look at the filed documents, for the purpose of determining how said documents affect the legal relationship and rights of parties concerned therewith. This argument has been rejected and it is settled that a court may look to documents on file with a regulatory body, determine the proper construction thereof, and apply that construction to the facts before it. In *Great Northern Ry. Co. v. Merchants' Elevator Co.*, 259 U.S. 285 (1922), a shipper brought suit in a state court in Minnesota to recover wrongfully exacted reconsignment charges. The carrier's filed tariff included a rule which levied a reconsignment charge of $5.00 per car as well as a supplement which excepted certain shipments from the rules. "Whether the charge was payable depended solely upon a question of construction; that is whether the body of the rule or the exception to it applied." 259 U.S. at 289. The carrier objected to the jurisdiction of the state court to decide that question. Judgment for the shipper was affirmed by the state supreme court. On certiorari, this Court affirmed both the jurisdiction of the state court and the correctness of its decision, saying:

> ". . . Here no fact, evidential or ultimate, is in controversy; and there is no occasion for the exercise of administrative discretion. The task to be performed is to determine the meaning of words of the tariff, which were used in their ordinary sense and to apply that meaning to the undisputed facts. That operation was solely one of construction; and preliminary resort to the Commission was, therefore, unnecessary." 259 U.S. at 294.

In the case at bar Petitioners do not really object to the Delaware courts' examination of the documents on file

with the Federal Power Commission. By way of defense to Cities' claims, petitioners requested the Delaware courts to look to the filed documents. Their real objection is that the courts' construction and application thereof does not accord with their own. It is in this connection that the much overworked plea for administrative uniformity is raised. Petitioners foresee a complete loss of repose in the industry if the state courts are allowed, in cases of disputed construction, to determine what the rate or charge is which the tariff prescribes. This argument carries no greater weight now than it did when rejected by this Court in the *Great Northern* case:

> "This argument is unsound. It is true that uniformity is the paramount purpose of the Commerce Act. But it is not true that uniformity in construction of a tariff can be attained only through a preliminary resort to the Commission to settle the construction in dispute. Every question of the construction of a tariff is deemed a question of law; and where the question concerns an interstate tariff it is one of federal law. If the parties properly preserve their rights, a construction given by any court, whether it be federal or state, may ultimately be reviewed by this court either on writ of error or on writ of certiorari; and thereby uniformity in construction may be secured." 259 U.S. at 290-1.

3. There has been neither a Commission proceeding nor a Commission order changing the rate to Cities from a conditional 11c per Mcf to an unconditional 11c per Mcf.

A realistic review of the undisputed facts in the case at bar shows conclusively that the doctrine of exhaustion of administrative remedies has never been brought into play; thus Section 19 of the Natural Gas Act should have no application herein.

As has been shown, the filing regulations promulgated in the No. 174 series of orders were intended by the Commission to relate strictly to procedural matters. The regulations required petitioners to file the contracts between themselves and Cities; however, there are no provisions for notice to Cities of such filing or the contents of such filing. The regulations contain no provision for a "proceeding" in respect of such filings and, in the cases at bar, no "proceeding" was in fact held. The assertion that the form letters mailed to petitioners, but never mailed to or served upon Cities, are orders entered in a proceeding to which Cities was a party strains credulity to the utmost.

The further assertion that such letters ordered a change in the relationship between Cities and petitioners from 11c per Mcf subject to refund, to 11c per Mcf not subject to refund, requires complete disregard of the cautionary language advising that acceptance for filing was not to "be construed . . . as constituting approval of any rate . . . nor . . . be deemed as recognition of any claimed contractual right or obligation associated therewith . . . " (R. 139, 640-641). Cities' claims are based *inter alia* upon a "claimed contractual right or obligation" on the part of the petitioners to refund the difference between the stated contract prices and the 11c price set by the void Kansas order. Can it be said that the form letters of acceptance, had they been served upon Cities, fairly advised that the Commission was thereby ordering an abrogation of the condition refund obligation of the petitioners?

The vulnerability of the common position asserted by the petitioners is all the more evident when the dissimilarity of their respective rate filings is examined. Pan American initially tendered its contract with Cities, as amended, and attached as an exhibit thereto a copy of the Kansas order. (R. 593-599). Pan American conveniently omitted tendering the refund letter agreements either as contract amendments or as exhibits. Texaco, on the other hand, did not initially tender a copy of the Kansas order, but offered only its

contract with Cities, as amended, together with billing statements which bore a notation that volume measurement and rate price were computed in accordance with the Kansas order. (R. 126, 130-138). Almost two years later, on July 12, 1957, the Commission advised Texaco by letter, that review of its rate schedules "discloses no documents therein as constituting specific authorization of the rate of 11c per Mcf at 14.65 p.s.i.a.". (R. 149). Texaco was further advised that subsequently tendered rate filings would not be accepted until Texaco filed, for each rate schedule, two copies of the Kansas order, *and* "all papers related thereto exchanged with the buyer as, for example, any agreement by the buyer to pay the related rate on a contingent or conditional basis, . . . " (R. 150). In response, Texaco tendered two copies of the Kansas order and "Two (2) copies of a letter dated January 21, 1954, from the Buyer, Cities Service Gas Co., setting forth the contingent or conditional basis upon which the minimum rate will be paid." (R. 152-153).

The petitioners, in pursuit of their common purpose to avoid refund obligations, seek to minimize any differences in their respective filings. Nonetheless they are forced to travel widely divergent paths in their arguments. For instance, Pan American asserts that the void Kansas order, not agreed to by Cities, is effective because filed, while the refund letter, agreed to by both parties, is ineffective because not filed. Texaco, on the other hand, is forced to argue that the void Kansas order, although not agreed to by Cities, is effective because filed while the refund letter, although filed at the same time, is ineffective because not agreed to by Texaco.

The simple, unalterable fact is that any claim to an unconditional 11c rate must be based solely on the Kansas 11c minimum price order and nothing can change the fact that that order is a nullity. Moreover, Texaco's rate schedules clearly reflect its refund obligation to Cities. The rate to be determined from the rate schedule is unequivocally tied in with the validity or invalidity of the Kansas

order. Just as clearly, Pan American's rate schedule calls for an applicable rate which is determinable only by reference to the validity or invalidity of the Kansas order. Pan American cannot seriously claim that it escaped any obligation to make refund by the simple expedient of omitting to file the refund letters. Its contract with Cities is specifically subject to all "lawful orders of all regulatory bodies . . . having jurisdiction." (R. 303). Either Cities' letter to Pan American and Pan American's written agreement to make refund are simply "executory of the contract between the parties" and the failure to file them is immaterial, or, Pan American has confessed a violation of the Commission's regulations for which it seeks this Court's approval.[14]

Nor can Petitioners claim that the submission of a billing statement reflecting a billing price of 11c per Mcf extinguished their obligations to make refund. Under the regulations, the billing statement is not a part of the rate schedule but merely an attachment thereto, 18 C.F.R. §§ 154.92(a), 154.93. The Commission's form letter of acceptance to Pan American does not purport to accept the billing statement for filing and it is therefore inappropriate to urge that the attachment of such a statement could in any way modify the parties' relationships. And, although Texaco's billing statements were initially designated as supplements to its rate schedule (R. 140-143), the Com-

[14] In asserting that its rate filings terminated any refund obligations, Pan American finds support in two cases which concerned conversion tariffs filed by pipeline companies pursuant to the Federal Power Commission's Order No 144. *Mobile Gas Service Corp. v. Federal Power Commission*, 215 F. 2d 883 (3d Cir. 1954), *affirmed sub nom United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); and *Tyler Gas Service Co. v. Federal Power Commission*, 101 U.S. App. D.C. 484, 247 F. 2d 590, *cert denied*, 355 U.S. 895 (1957). These cases do not support the petitioner's contention. In both cases the Courts of Appeals correctly interpreted the conversion tariffs as restatements of the contract price and not as unilateral changes thereof. As restated, the tariffs became part of an "*unchanged* contract" 215 F. 2d at 891 note 16; 247 F. 2d at 593. The unique problems which arose out of the conversion of pipeline rate forms from contract rates to tariff rates simply are not in point as respects the effect to be given to the filings in the instant case.

mission has expressly repudiated any contention that such designation authorized an 11c rate. (R. 149). The billing statements do accurately reflect the money that was actually changing hands on June 7, 1954. Although this Court recently declined to pass on whether that fact alone establishes the effective rate, *Texas Gas Transmission Corp. v. Shell Oil Co.*, 363 U.S. 263, 269 note 7 (1960), the Courts of Appeals for both the Third and the Tenth Circuits have held that the legally effective rate is the one which has accrued by force of the contract and not necessarily the rate being billed and charged on that date. *Kerr-McGee Oil Industries, Inc. v. Federal Power Commission*, 260 F. 2d 602 (10th Cir. 1958); *Phillips Petroleum Co. v. Federal Power Commission*, 258 F. 2d 906 (10th Cir. 1958); *Natural Gas Pipe Line Company of America v. Federal Power Commission*, 253 F. 2d 3 (3d Cir. 1958), *cert. denied*, 357 U.S. 927 (1958).

Thus there has been neither proceeding nor order by the Commission which changed the conditional 11c rate to an unconditional 11c rate. The doctrine of exhaustion is beside the point simply because Cities' contractual and legal relationship to petitioners has never been modified or abrogated by an order issued by the Commission in a proceeding to which Cities was a party.

When reduced to its essentials the case at bar is extremely simple. It is nothing more than the judicial enforcement of refund contracts, the conditions of which have been satisfied. Petitioners' attempt to complicate the matter by vigorously asserting that the mere presence of the void Kansas order in the files of the Federal Power Commission has serious legal consequences. But this is not so; the order is still a nullity. It cannot change the contractual or quasi-contractual relationships between Cities and the petitioners on the theory that it remains valid as an order; nor on the theory that it has been agreed to; nor on the theory that it has been sanctioned by an appealable order of the Federal Power Commission. In the light of *Cities*

Service Gas Co. v. State Corporation Commission of Kansas, 355 U.S. 391 (1958), the Delaware courts properly refused to attribute any legal effect to the Kansas order merely because it remains physically present in the files of the Federal Power Commission. Cf. *Michigan Consolidated Gas Co. v. Panhandle Eastern Pipe Line Co.*, 226 F. 2d 60, 68 (6th Cir. 1955), *cert. denied*, 350 U.S. 987 (1956). This action by the Delaware courts does not amount to collateral reversal of an FPC order nor does it in any way circumvent or enervate Section 19.

4. The Commission recognizes that the question of the effect to be given to the void Kansas order is a question for the courts.

Action taken by the Federal Power Commission subsequent to January 20, 1958, gives the quietus to any remaining supposition that the Commission established an 11c rate on the basis of the Kansas order without respect to its validity or invalidity.

On April 28, 1958, the Commission issued a Notice of Proposed Rulemaking in Docket No. R-168, 23 Fed. Reg. 2973 *et seq.* Referring to decisions of this Court invalidating the Kansas and Oklahoma minimum price orders, the Commission expressed its conclusion that rate filings predicated on such orders "may have no legal basis" 23 Fed. Reg. 2973. The Commission further stated that among the questions which it was considering were whether such filings were invalid when filed; became invalid on the day of the decision of this Court, or on the day of the issuance of this Court's mandate, or on the happening of some other event; or whether such filings were still effective because of failure to protest the filing, or agreement to pay the filed rate, or by estoppel, or for any other reason. 23 Fed. Reg. 2974. Although the proceedings in Docket No. R-168 are still pending, the Commission has refused to make a determination of the rate effective on June 7, 1954, where the controversy as to said rate arises out of the Kansas minimum price order and the dispute is being litigated by the

parties in state and federal courts. *Socony Mobil Oil Company, Inc., (formerly Magnolia Petroleum Company)*, Docket No. G-16717, Order Denying Petition for Determination of Effective Rate, issued November 22, 1960; *Pan American Petroleum Corporation (formerly Stanolind Oil and Gas Company)*, Docket No. G-4904, Order Issuing Certificate of Public Convenience and Necessity, and Granting in Part and Denying in Part Appeal and Motions, issued December 1, 1960. In the latter case the Commission stated that price disputes involving the Kansas order are matters that "may reasonably be left for disposition by the courts." Thus the Commission's announced position on the effect to be given the Kansas order is directly contrary to that asserted by petitioners.

E. Petitioners Misinterpret the Decision in *Cities Service Gas Co. v. Federal Power Commission.*

Petitioners interrelated theories of exhaustion and collateral attack rest in large part on their misinterpretation of *Cities Service Gas Co. v. Federal Power Commission*, 255 F.2d 860 (10th Cir. 1958), *cert. denied*, 358 U.S. 837 (1958), hereinafter called the *Magnolia* case. In that case Magnolia Petroleum Company had tendered for filing its gas purchase contract with Cities, which provided for a price of 6c per Mcf, and a copy of the invalid Kansas 11c order. On November 30, 1955, Cities had brought suit against Magnolia in the United States District Court for the District of Kansas, seeking a determination of its contract rights. Jurisdiction was founded on diversity of citizenship. Cities had deposited an amount of money representing payment for gas delivered from July 23, 1955, computed at 11c per Mcf. The court impounded the difference between 6c and 11c awaiting the outcome of Cities' suit attacking the validity of the Kansas order. This was the fact situation on March 21, 1957, when the Commission accepted Magnolia's tendered rate schedule "subject, however to the express condition that such acceptance is without prejudice to any claims or contentions which have been made by or for

Magnolia Petroleum Company or by or for Cities Service Gas Company in pending litigation concerning this particular sale of gas." 255 F.2d at 861-2. Both Cities and Magnolia petitioned for rehearing and clarification and the Commission, on May 17, 1957, issued a second order striking the condition above quoted. Cities took an appeal to the Tenth Circuit urging that the Commission erred in accepting the minimum price order and praying that the reviewing court adjudicate the contract rate and the legally effective rate on June 7, 1954, to be 6c per Mcf. The court refused to adjudicate the contract rate to be 6c but did set aside the Commission's order accepting Magnolia's filed rate and directed the Commission to strike the Kansas order from its files. In the light of the intervening decision of this Court in *Cities Service Gas. Co. v. State Corporation Commission of Kansas*, 355 U.S. 391 (1958), the court's substantive holding was plainly correct, viz:

> "When the United States Supreme Court struck down the Kansas order, there was no longer a valid order which could modify the contract rate, and the contract rate was the rate effective on June 7, 1954." 225 F. 2d at 865.

Petitioners' argument, that, unless in every case stricken from the Commission's files by judicial review under Section 19, the Kansas order continues to live, is just as clearly incorrect. And it is indeed a strange argument to urge under the aegis of administrative convenience and uniformity.

The court did hold that the Commission's order accepting Magnolia's rate schedule was reviewable and that Cities was aggrieved "because the Commission's acceptance of the rate schedule was pro forma the acceptance of the rate then being paid." 255 F.2d at 863. The court did *not* hold that Cities' right to recover refunds from Magnolia in separate litigation was completely dependent upon purging the Commission's files of the void Kansas order. The court in fact recognized Cities' right to recover overpayments. Its concern that Commission acceptance of the void

Kansas order not be allowed to stand in the way of refund was plainly expressed:

> "... The power of a district court to grant reparation of amounts paid pursuant to an invited order accepted as a current rate by the Commission is presently being questioned by a petition for certiorari of the case of Natural Gas Pipeline Co. of America v. Harrington, 5 Cir., 246 F.2d 915. Regardless of petitioner's right to pursue its remedies for the return of money paid prior to March 21, 1957, its right to redeem excess payments made subsequent to the Commission's action are further imperiled in a separate action by the existence of the outstanding Commission order." 255 F.2d at 863-864.

The decision of this court on January 20, 1958, striking down the Kansas order made the merits of the *Magnolia* case unmistakably clear. That fact, we submit, together with the court's obvious desire not to prejudice Cities' then pending case against Magnolia in the District Court, assisted the Court of Appeals to its assertion of jurisdiction.

It cannot be said with certainty that the Court of Appeals would have granted review had this Court not invalidated the Kansas price order some four months earlier. Especially is this true in view of the admonition that the Commission was not to be faulted for accepting the order when first tendered. The court said:

> "Petitioner argues here that the Kansas Corporation Commission order, in view of earlier decisions of the U. S. Supreme Court was so patently invalid that the Federal Power Commission erred in giving any cognizance to the order and should have rejected it when filed by Magnolia. We reject that argument. On the pertinent date, June 7, 1954, the authority of the Kansas Commission had been upheld by the Kansas Supreme Court, the highest judicial body that had then considered the precise question in-

volved. It was not the function of the Federal Power Commission to pass upon the question of whether or not the Kansas Supreme Court was in error. Good administrative policy dictates otherwise. The inherent difficulties that may arise from a later change in judicial interpretation are not attributable to administrative fault. Our books of law carry many cases requiring reversal of a lower court by reason of a change occurring between trial and appeal." 255 F.2d at 862 note 1.

It will be anomalous if the recognition so given by the Court of Appeals to this Court's voidance of the Kansas order can now be used to breathe life into the invalid 11c minimum price so long as copies thereof remain on file with the Federal Power Commission. Petitioners urge *Magnolia* upon this Court for the proposition that Commission acceptance of a copy of the Kansas order fixes an unconditional rate of 11c unless the order be stricken on judicial review. We do not so read *Magnolia*, but if it must be thus interpreted, then this Court should decline to follow that precedent.

Petitioners seem to assert that Cities could preserve its refund rights only by physically removing the Kansas order from the Federal Power Commission files each and every time it there appeared. There is a certain absurdity in contending that administrative uniformity requires a multiplicity of appeals under Section 19, all contesting the validity of the Kansas 11c order while, at the very same time, the identical question was pending in this Court. Moreover, the implication that petitioners' filings constitute a unilateral abrogation of Cities' contract rights, successful because unprotested, carries with it an inference that the Commission has been a partner to circumventions of *Mobile*. This inference is effectively rebutted by the Commission's order entered May 25, 1956, approving settlement of Cities' rate case then pending in Docket G-2410. By the terms of that order, Cities is required to refund to its jurisdictional customers, in accordance with the formula set

forth in the order, the major portion of the refund money recovered by Cities on account of the invalidity of the Kansas 11¢ order. *Re Cities Service Gas Co.*, 15 F.P.C. 1448, 1453-58. Obviously then, the Commission had not accepted the Kansas order as setting an 11¢ per Mcf rate irrespective of the validity of said order. All that the Commission did was accept the Kansas order as a compulsive modification of Cities' contracts if, but only if, said order was valid. The order having been declared a nullity there is nothing novel in allowing a court, state or federal, to treat is as just that—a nullity. It would be novel, however, to breathe life back into the void order as petitioners here urge. Such a result would be a direct contradiction to this Court's decision in *Cities Service Gas Co. v. State Corporation Commission of Kansas*, 355 U.S. 391 (1958).

The Delaware courts have neither collaterally revised an order of the Commission nor have they invaded the appellate jurisdiction vested in the Courts of Appeals. At the most, the Delaware courts have properly construed a contract filed as a rate schedule as is permitted under the doctrine of *Great Northern Ry. Co. v. Merchants' Elevator Co.*, 259 U.S. 285 (1922).

CONCLUSION

For these reasons, it is respectfully submitted that the judgment below should be affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 915 81

TEXACO INC., a Delaware Corporation, *Petitioner*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and THE HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, *Respondents*,

and

CITIES SERVICE GAS COMPANY, a Delaware corporation, *Intervening Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

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and

CITIES SERVICE GAS COMPANY, a Delaware corporation, *Intervening Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

Petitioner prays that a writ of certiorari be issued to review the judgment of the Supreme Court of the State of Delaware in its Civil Action No. 69, 1959.

OPINIONS BELOW

The opinion of the Superior Court of Delaware in and for New Castle County in Civil Actions Nos. 670, 671 and 708 (1958) (Appendix A, pp. 1a-15a) is reported at 155 A. 2d 879. The opinion of the Supreme

Court of Delaware is reported at 158 A. 2d 478 (Appendix B, pp. 16a-30a).

JURISDICTION

The judgment of the Supreme Court of Delaware was entered on March 18, 1960 (Appendix C, pp. 31a-32a). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3). The issue of petitioner's rights and immunities under the Natural Gas Act was raised in its Answer (Appendix B, p. 20a) its Motion for Summary Judgment in the Superior Court (Appendix D, pp. 35a-36a) and in its Petition for Writ of Prohibition in the Supreme Court of Delaware (Appendix E, pp. 37a-44a).

QUESTIONS PRESENTED

1. Whether, in the light of Section 22 of the Natural Gas Act, a state court has jurisdiction to entertain and decide a common law action to recover monies paid in compliance with a rate filed with and accepted and made effective by the Federal Power Commission for sales of natural gas subject to the Act?

2. Whether, in the light of Section 19 of the Natural Gas Act, a state court has jurisdiction to entertain and decide a common law action which collaterally attacks orders of the Federal Power Commission reviewable under Section 19 but for which no review was sought?

3. Whether a state court, in a common law action in which the legality of a filed rate of a natural-gas company under the Natural Gas Act is material to its decision, has jurisdiction to determine that such filed rate is different from the filed rate accepted and

made effective by formal action of the Federal Power Commission?

STATUTES AND REGULATIONS INVOLVED

The provisions of the federal statute involved are Sections 4, 5, 7, 16, 19 and 22 of the Natural Gas Act, 52 Stat. 822, 823, 825, 830, 831 and 833 (1938), 15 U.S.C. 717, 717c, 717d, 717f, 717o, 717r and 717u (Appendix F, pp. 45a-55a). Sections 154.92 through 154.94, and 157.23 of the Federal Power Commission's Regulations under the Natural Gas Act (18 C.F.R. 154.92-154.94 and 157.23), are also involved, having the force and effect of statutes (Appendix G, pp. 56a-60a).

STATEMENT

Responsive to the Rules and Regulations applicable to independent producers of natural gas, which were issued by the Federal Power Commission to implement the decision of this Court in *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954), petitioner, an independent producer as defined in those regulations, on September 24, 1954, tendered to the Commission for filing the rate of 11¢ per Mcf at 14.65 pounds per square inch absolute as its rate under the Natural Gas Act for the sales of natural gas here involved to intervening respondent, Cities Service Gas Company (Cities). In connection therewith, petitioner filed its gas sales contract and billing statement with tables showing that on June 7, 1954, petitioner was being paid at the 11¢ rate for such sales in accordance with a minimum price order issued by the Kansas Corporation Commission requiring the payment of such price for this gas after January 1, 1954. (Appendix B, p. 19a). On December 29, 1955, the Commission duly convened and voted to accept, and thus make

effective as petitioner's filed rate under the Natural Gas Act, the 11¢ rate so tendered. (The Commission's minutes showing this action are set forth in Appendix II, pp. 65a-69a). By letter order dated February 7, 1955, the Commission officially notified petitioner of this formal action and its acceptance of this rate (Appendix I, pp. 76a-80a).

Also, pursuant to the said regulations and Section 7 of the Act, on November 24, 1954, petitioner filed with the Commission its application for a certificate of public convenience and necessity for authority to engage in such sales which certificate was issued by order dated December 5, 1955, and accepted by petitioner by letter dated December 16, 1955. Though Cities was notified of such proceedings pursuant to the Act and the Commission's regulations, it did not challenge this order, nor was any objection taken to the Commission's action of February 7, 1955, making effective the 11¢ rate.

Subsequently, petitioner filed a change in rate giving the statutory notice required by Section 4 of the Act, that, effective July 1, 1957, its rate for these sales would be increased *from 11¢* per Mcf at 14.65 p.s.i.a. to 11.055¢ per Mcf at the same pressure base. (This increase reflected Cities' agreement in the sales contract to reimburse petitioner for 50 per cent of any increased production taxes. A one per cent state severance tax became effective July 1, 1957.) By letter order dated September 8, 1957, the Commission, effective as of July 1, 1957, accepted the increased rate filing, as petitioner's Supplement No. 5, (Appendix I, pp. 80a-82a), and made effective petitioner's new 11.055¢ rate. Again, Cities, although it had statutory notice, did not challenge this order of the Commission.

Cities paid petitioner at the 11¢ rate from January 1, 1954 through June 30, 1957, and at the 11.055¢ rate from July 1, 1957 through December 22, 1957. However, upon invalidation of the above mentioned Kansas 11¢ minimum price order by this Court on January 20, 1958, in *Cities Service Gas Co. v. Kansas Corporation Commission*, 355 U.S. 391, Cities sued petitioner upon a common law action in a Superior Court in Delaware to recover the difference between the amounts it had paid at the 11¢ and the 11.055¢ rates and the lower prices set out in the gas sales contract.[1]

Cities' suit made no mention of the fact that the gas sales were subject to the exclusive jurisdiction of the Federal Power Commission under the Natural Gas Act, that petitioner's rate had been filed by the Commission or that petitioner had been issued a certificate of public convenience and necessity authorizing such sales. It bottomed its action on a so-called "refund letter" dated January 21, 1954, in which Cities advised petitioner that it would pay the price of 11¢ per Mcf, but was doing so involuntarily and under compulsion, and that should the Kansas order be held to be invalid it would expect to be refunded the amounts it had paid in excess of amounts which would have accrued under the original contracts. (Appendix B, p. 18a). Cities further alleged that the provisions of this letter were referred to on all of the checks by which Cities paid petitioner. Petitioner did

[1] Actually suit was brought on three sales contracts which were designated The Texas Company's FPC Rate Schedules Nos. 100, 68 and 69. (Petitioner changed its name, effective May 1, 1959, from The Texas Company to Texaco Inc.) Since Rate Schedule No. 100 accounts for almost $400,000 of the $412,955.95 for which recovery is sought, in the interest of simplicity, petitioner's statement has been confined to the facts with respect to that particular contract.

not reply to Cities' letter of January 21, 1954, but did endorse and cash the checks. Cities sought recovery in the state court on the theory that the letter, the reference thereto on the checks, and the acceptance of the checks constituted a "contract" to make refund. Other common law bases for recovery were set forth in the petition, but the contract theory was accepted by the Supreme Court of Delaware.

Petitioner defended by setting out the provisions of the Natural Gas Act requiring the filing of rates of natural gas companies; the Commission order accepting the 11¢ rate; the Commission order issuing to petitioner a certificate of public convenience and necessity covering these sales; and the Commission order accepting the subsequent increase from a rate of 11¢ to the rate of 11.055¢. Petitioner also showed that, in addition to the original contract and the Kansas 11¢ minimum price order, the "refund letter" was filed with the Commission as a part of petitioner's rate schedule. Thus, the record shows that when the increase in rate from 11¢ to 11.055¢ was accepted and made effective as late as September 8, 1957, the Commission continued in its original determination that, after considering all the documents on file as petitioner's rates schedule, a rate of at least 11¢ was petitioner's legally effective rate for these sales on and after June 7, 1954.

Petitioner then showed that Cities had raised no objection to any of these three reviewable orders of the Commission, nor did it apply for rehearing upon or petition for review of any of them under Section 19 of the Act.

Petitioner moved for summary judgment on the ground that the state court was without jurisdiction.

When the Superior Court overruled this motion, petitioner, together with the defendants in consolidated companion cases,[2] filed in the Supreme Court of Delaware a petition for a writ of prohibition, seeking to prohibit the Superior Court from proceeding further with these actions. Cities, plaintiff in the cases below, intervened as a respondent and the court stayed further proceeding below.

The Delaware Supreme Court found that the state court had jurisdiction and denied the writ of prohibition. In reaching its conclusion it held, first, that claims for refunds of monies paid in compliance with petitioner's filed rate are not founded upon any liability or duty created by the Natural Gas Act so that Section 22 of the Act is inapplicable, second, that review of the Commission's orders under Section 19 is required only when the reasonableness of the filed rate is being attacked in a federal court so that Cities failure to challenge the Commission's orders did not preclude its suit, and third, that until the Commission has determined the justness and reasonableness of a rate pursuant to its review powers under the Act, a state court has the power to determine, as did the lower court, that a filed rate is different than the rate accepted by the Commission as the effective filed rate. To make such findings, the Court found it necessary to interpret key decisions of this Court construing the Natural Gas Act and other applicable decisions.

The Supreme Court of Delaware entered its final judgment March 18, 1960 but stayed further proceed-

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[2] These consolidated cases were: *Cities Service Gas Co.* v. *Columbian Fuel Corp.*, Civil Action Nos. 670 and 708, 1958, *Cities Service Gas Co.* v. *Pan American Petroleum Corporation*, Civil Action No. 722, 1958, and *Cities Service Gas Co.* v. *The Texas Company*, Civil Action No. 671.

ings pending action by this Court on this petition for writ of certiorari. (Appendix C, p. 31a). In its notice of such stay the Supreme Court of Delaware said,

> "All the members of the Court are of the opinion that the application for a stay should be granted, for the reason that the case seems to us to be an appropriate one for the granting of the writ [of certiorari]—" (Appendix C, p. 33a).

REASONS FOR GRANTING WRIT

The effect of the decision of the Delaware Supreme Court, if allowed to stand, will be to undermine uniformity of enforcement by the Federal Judiciary of liabilities and duties created by the Natural Gas Act, abrogate important regulatory authority of the Federal Power Commission, and disrupt the orderly administration of the Act

- by opening to collateral attacks, in the courts of the 50 states, past and future orders of the Federal Power Commission regulating some 8,000 natural-gas companies, contrary to the express provisions of the Natural Gas Act,
- by overturning the finality of uncontested filed rates of natural-gas companies contrary to this Court's holding in *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951),
- by enervating Section 19 of the Act, contrary to this Court's decision in *Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320 (1958),
- by finding that regulation by the Federal Power Commission under the Natural Gas Act begins

only with its review of rates under Sections 4(e) and 5(a) of the Act, contrary to this Court's pronouncements in *Atlantic Refining Co.* v. *New York Public Service Commission*, 360 U.S. 378 (1959),

by holding that private rate agreements with respect to rates of regulated natural gas sales become effective and are enforceable absent prior Commission action, contrary to the proper construction of this Court's opinion in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

In addition to preventing such consequences, an opinion of this Court will resolve the controversial issues in numerous similar suits, involving millions of dollars, now pending in various state and federal courts. (See Appendix J, pp. 83a-85a, for list of these cases).

1. Incompatibility With the Filed Rate Doctrine Expressed in the Montana-Dakota Case

The court below distinguished between the legal effect of rates *filed with* and rates *reviewed by* the Commission, holding that, while it did not have the power to change a rate which had been found to be reasonable by the Commission, it did have the power to change a rate which was only filed with, voted upon, and accepted by the Commission. (Appendix B, p. 28a). The Delaware Supreme Court so held despite this Court's majority statement in *Montana-Dakota* that:

"It [the buyer] can claim no rate as a legal right that is other than the filed rate, whether fixed, or merely accepted by the Commission, and not

> even a court can authorize commerce in the commodity on other terms." (341 U.S. at 251).

and the minority statement that:

> "Unless they [the filed rates] are challenged either by an interested party or on the Commission's initiative, the filed rates become the legal rates." (341 U.S. at 255).

2. Incompatibility With the Mobile and Atlantic Refining Co. Cases

Despite the fact that Cities' "refund letter" was filed and accepted by the Commission as a part of petitioner's rate schedule under the Natural Gas Act, the Delaware Court held that Cities' suit for enforcement of this "contract" was not an action to enforce a liability or a duty created by the Act or any rule, regulation or order thereunder and therefore the state court was not excluded from jurisdiction by Section 22 of the Act. To enable it to make this holding, the Delaware Court interpreted this Court's decision in the *Mobile* case (350 U.S. 332) to mean that there is no regulation of natural-gas companies by the Federal Power Commission until the Commission exercises its review powers under either Sections 4 or 5 of the Act. (Appendix B, pp. 24a-25a).

Petitioner believes this interpretation to be incompatible with *Mobile* and contrary to the concept of the Commission's regulatory functions with respect to initial rates as expressed in the *Atlantic Refining Co.* case. (360 U.S. at 391). Regardless of what the parties may agree, they cannot engage in the sales of natural gas until a rate therefore has been filed with and accepted by the Commission—until a rate has been established as required by the Act. Nor do changes

in rates automatically become effective by agreement of the parties as the state court seems to believe. They must also be filed in accordance with the provisions of the statute and the Commission's regulations. In either case, the Commission must exercise important regulatory functions before rates become effective and enforceable. Therefore, the rates derive their only force and effect from the Natural Gas Act so that rights with respect to rates, whether it be a producer's right to collect his effective filed rate or a pipeline's right to recover for alleged overpayments, are rights "created" by the Act within the meaning of Section 22.

The effect of the state court's holding—that federal courts do not have exclusive jurisdiction of suits involving disputes over rates established by the Natural Gas Act because such rights are not "created" by the Act—will be to destroy uniformity of enforcement of the Act, contrary to the obvious purpose of Section 22 thereof.

Moreover, no sales of natural gas can be made until authorized by the Commission through the issuance of a certificate of public convenience and necessity under Section 7 of the Act, such as the one issued to petitioner in this case. In the *Atlantic Refining Co.* case, 360 U.S. at page 391, this Court said that Section 7 "requires a most careful scrutiny and responsible reaction [by the Commission] to initial price proposals of producers" and "requires the Commission to evaluate all factors bearing on the public interest." Such determinations require the exercise of the special expertise of the Federal Power Commission before it makes effective a filed rate. Therefore, the state court's substitution of its version of the proper rate for the rate authorized and made effective by the

Commission is tantamount to a holding that a state court can substitute its *opinion* of whether or not a rate is in the public interest, for the determination of the Commission that it is after the Commission has exercised its special knowledge. This results in abrogating regulatory powers of the Federal Power Commission vital to its proper administration of the Act.

3. Incompatibility With the Tacoma v. Taxpayers of Tacoma Case

Even assuming that the state court was right in holding that the 11¢ rate accepted by the Commission was the incorrect rate, the jurisdiction assumed and the action taken by that court is in direct conflict with this Court's holding in the *Tacoma* case. (357 U.S. 320).

Cities failed to exhaust its administrative remedies by timely challenging the orders of the Commission determining petitioner's filed rate to be the 11¢ rate as it could have done under Section 19(a) of the Act and by seeking review under Section 19(b) as it had done in a similar minimum price order controversy in *Cities Service Gas Company* v. *Federal Power Commission*, 255 F. 2d 860 (10th Cir. 1958). In that case and in *Natural Gas Pipeline Co. of America* v. *Federal Power Commission*, 253 F. 2d 3 (3rd Cir. 1957) the courts held that the action of the Commission in accepting an independent producer's rate for filing sufficiently aggrieved the purchasing pipelines to allow them to seek review under Section 19(b).

From this Court's statements in the *Tacoma* case, it seems clear to petitioner that Cities' *exclusive* mode of seeking relief from the Commission's orders with respect to petitioner's filed rates was a direct attack

thereon via the procedure prescribed and available under Section 19. In discussing Section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), which is identical in all respects with Section 19(b) of the Natural Gas Act, this Court said in the *Tacoma* case at page 336 that that section "prescribed the specific, complete and exclusive mode for judicial review of the Commission's orders" and that all objections to the Commission's action "must be made in the Court of Appeals or not at all."

Although petitioner challenged the state court's jurisdiction on the grounds that Cities had failed to follow this exclusive Section 19 review procedure, the Supreme Court of Delaware held that the exhaustion of administrative remedies would only "be applicable to a suit in the federal court attacking the reasonableness of the rate." (Appendix B, p. 29a). While it added that in this case "no attack is made upon the 'filed rate' which the federal courts have held to be the gas contract rate," such statement ignores the effect of its decision which sets aside, and therefore constitutes a collateral attack upon, the orders of the Commission accepting 11c as the filed rate. Thus the state court's decision is in direct conflict with *Tacoma*.

Furthermore, as this Court pointed out at pages 336 and 337 of its *Tacoma* decision, it was the intent of Congress that the Commission's orders have finality. This Congressional intent would be thwarted if, as the Delaware Supreme Court has held, Commission orders reviewable under Section 19 of the Act remain subject to collateral attack in state courts for years after they have gone unchallenged.

CONCLUSION

For the reasons hereinabove set forth, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 81

TEXACO INC., *Petitioner*

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, AND THE HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, *Respondents*

and

CITIES SERVICE GAS COMPANY, *Intervening Respondent*

On Writ of Certiorari to the Supreme Court of the State of Delaware

BRIEF FOR PETITIONER TEXACO INC.

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On Writ of Certiorari to the Supreme Court of the State of Delaware

---

BRIEF FOR PETITIONER TEXACO INC.

OPINIONS BELOW

The opinion of the Superior Court of the State of Delaware in and for New Castle County (R. 8) is reported at 155 A. 2d 879. The opinion of the Supreme Court of the State of Delaware (R. 33) is reported at 158 A.2d 478.

JURISDICTION

The judgment of the Supreme Court of the State of Delaware was entered on March 18, 1960 (R. 44). Petition for Writ of Certiorari was filed on May 6, 1960, and granted on June 13, 1960 (R. 781). The issue of Petitioner's rights and immunities under the Natural Gas Act was raised by its Answer (R. 59-68), by its Motion for Summary Judgment in the Superior Court (R. 170), and by its Petition for Writ of Prohibition in the Supreme Court of the State of Delaware (R. 1-7).

QUESTIONS PRESENTED

Where the Federal Power Commission has accepted, filed and made effective a rate for sales of natural gas over which it has regulatory jurisdiction and issued a certificate of public convenience and necessity authorizing sales at such rate, and neither the order of the Commission so establishing such rate nor the order issuing such an unconditioned certificate have ever been protested, challenged, modified or set aside pursuant to the exclusive procedure prescribed by the Natural Gas Act, does a state court, in a common law action of contract seeking partial refund of payments which were nevertheless made in conformance with the rate so established by the Commission, have jurisdiction or power

(a) to determine that the effective filed rate is different from the rate accepted for filing by the Commission;

(b) to determine that the formal action of the Commission in accepting such rate for filing and making it effective is a nullity;

(c) to enforce, with retroactive effect, its own version of the effective rate when Section 22 of the Natural Gas Act, vests in federal district courts exclusive jurisdiction to enforce any liability or duty created by that Act.

STATUTES INVOLVED

The provisions of the federal statutes involved are Sections 4, 5, 7, 16, 19, and 22 of the Natural Gas Act, 52 Stat. 822, 823, 825, 830, 831, and 833, 15 U.S.C. §§ 717c, 717d, 717f, 717o, 717r, and 717u, which are set forth in the Appendix. The provisions of the Federal Power Commission's Regulations under the Natural Gas Act, which have the force and effect of statutes and are involved, are Sections 154.21, 154.91(a), 154.92 through 154.102, and 157.23 (a) and (b), 18 C.F.R. 154.21, 154.91(a), 154.92-154.102, 157.23(a) and 157.23-(b). These provisions are also set forth in the Appendix.

PRELIMINARY STATEMENT

The factual background of the instant proceeding parallels that underlying the companion proceeding No. 80, in which Pan American Petroleum Corporation, (Pan American) is the petitioner. The basic controversy in both cases concerns the rates for the sale of natural gas from the Hugoton Field in the State of Kansas to Cities Service Gas Company (Cities). Therefore, to avoid redundancy in briefing Texaco Inc. (Texaco)[1] adopts and supports the arguments advanced in the Pan American brief and urges the merits of those arguments upon this Court. Accordingly,

[1] Petitioner changed its corporate name from The Texas Company to Texaco Inc., effective May 1, 1959.

Texaco will limit its briefing to consideration of the specific circumstances of Commission action upon Texaco's rates and to emphasis of the jurisdictional question presented as specifically related to those Commission actions.

STATEMENT OF THE CASE

The sequence of events precipitating the present controversy is as follows:

The Period Prior to June 7, 1954[2]

1. By contract dated June 16, 1949 (R. 69-81) petitioner agreed to sell natural gas it produced from the Kansas Hugoton Field to Cities, the intervening respondent. Such sales admittedly were to be made in interstate commerce for resale (R. 208).[3]

2. By amendment dated September 8, 1949, additional acreage was added to the original commitment (R. 68).

3. On December 2, 1953, the State Corporation Commission of the State of Kansas entered its 11 cent

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[2] Prior to the June 7, 1954 decision of this Court in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, the Commission made no attempt to exercise jurisdiction over the sales by producers in interstate commerce of natural gas for resale because it was of the opinion that the "production or gathering" exception of Section 1(b) of the Natural Gas Act exempted such sales. *Columbian Fuel Corp.*, 2 F.P.C. 200 (1940).

[3] Although two smaller contracts between Texaco and Cities are also involved in this litigation (R. 53, 54), since the June 16, 1949 contract accounts for almost $400,000 of the $412,955.95 for which recovery is sought, in the interest of simplicity, Texaco's statement will be confined to the facts with respect to that particular contract. The June 16, 1949 contract subsequently became Texaco's FPC Rate Schedule No. 100.

Minimum Price Order, Docket No. 44,079-C (C-3216), (R. 262-268). After determining that "a fair and reasonable minimum price for gas at the wellhead in the Hugoton Field" of "eleven cents (11¢) per Mcf (14.65 pounds p.s.i.a.)" was "in the public interest and welfare" (R. 267), it made the payment of this minimum 11 cents per Mcf a condition precedent to the withdrawal of gas from the Kansas Hugoton Field on and after January 1, 1954 (R. 268).

4. By letter to Texaco dated January 21, 1954, Cities referred to the said Kansas Minimum Price Order, stated that Cities and others had petitioned for judicial review thereof and that "Pending final judicial determination of the said Order" it would pay for the gas at the rate of 11 cents. It added that:

> "In the event the said order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayment." (R. 154).

Texaco did not reply to this letter nor has it ever agreed to such a refund.[4]

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[4] This January 21, 1954 "refund letter" is the document Cities and the Courts below considered as constituting the "contract" upon which Cities bases its suit. The letter was subsequently filed by Texaco with the FPC and became Supplement No. 4 to Texaco's FPC Rate Schedule No. 100 (R. 155-156). Each of Cities' voucher checks in payment for gas since January 1, 1954 contained a notation referring to this "contract" of January 21, 1954 (R. 56).

The FPC Filings and the Commission's Orders

5. Immediately after the June 7, 1954 holding of this Court that "all wholesales of natural gas in interstate commerce" are subject to regulation under the Natural Gas Act, *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 682, the Commission promulgated producer Regulations, initially issued on July 16, 1954, and now codified with slight but immaterial modification at 18 C.F.R. § 154.91, *et seq.*[5] Every independent producer, as defined therein, who on, or since June 7, 1954 had engaged in the sale of natural gas subject to the Commission's jurisdiction, was required to file rate schedules and also to obtain certificates of public convenience and necessity authorizing such sales.[6] The rate schedules to be filed were to be the basic contracts and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954. See Section 154.93 of the Commission's Regulations.

6. Responsive to these producer regulations, on September 24, 1954, Texaco, with a cover letter (R. 126), tendered to the FPC for filing the following:

(a) copies of the June 16, 1949 gas sales contract with Cities (R. 69-81),

(b) copies of the September 8, 1949 amendment adding additional acreage (R. 68), and

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[5] Since pertinent Sections of the Natural Gas Act and of the Commission's Regulations are set out in the Appendix, references thereto will be only by Section number.

[6] Even though producers then engaged in jurisdictional sales had no certificates, they were prohibited from discontinuing such sales by Section 7(b) of the Act. *J. M. Huber Corp.* v. *Federal Power Commission*, 236 F. 2d 550 (3d Cir. 1956), *cert. denied* 352 U.S. 971 (1957).

(e) seventeen separate billing statement tables, one for each production unit covered by the contract, showing that the rate being paid for this gas on June 7, 1954, was 11 cents per Mcf "in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216)," which was the Kansas 11 cent Minimum Price Order (R. 130-138).[7]

Copies of such filings were also forwarded to Cities (R. 127, 212).

At the same time, Texaco also filed its Application for Certificate of Public Convenience and Necessity in the form specified by the Regulations, Section 157.23 (R. 173).

7. The June 16, 1949 contract filings were designated by the Commission as Texaco's FPC Rate Schedule No. 100 (R. 225). No protest of this rate filing of 11 cents was made by Cities pursuant to Section 154.27 of the Commission's Regulations nor under pertinent provisions of the Commission's Rules.

8. On December 29, 1954, the Commission duly convened and after considering Texaco's tendered 11

[7] Because of the multiplicity of billing statements, exact copies of the Minimum Price Order were not included with the initial filing. However, when the FPC subsequently requested Texaco to do so (R. 149), Texaco submitted copies of the Minimum Price Order (R. 152) and copies of Cities' January 21, 1954 letter which Cities has referred to as the "refund letter" (R. 153). These two documents were then filed by the Commission and designated as Supplements Nos. 3 and 4, respectively, to Texaco's FPC Rate Schedule No. 100 (R. 155-156). Texaco had not included Cities' letter of January 21, 1954 in its initial rate filings because the Regulations only provided for the filing of "the basic contract and all supplements or agreements amendatory thereof". Section 154.93. Texaco has never agreed to the effectiveness of Cities' "refund letter" as a contract or an agreement.

cent rate, voted to accept the same for filing and directed that the filing companies be advised of this action. This formal action is reflected by the official minutes of this meeting (R. 222-225). They show that the Commission voted to accept "the rate filings identified on attached Table 1" (R. 224) which table, captioned "Summary of Independent Producer Rate Filings—Rates in Effect on June 7, 1954" shows for Texaco's Rate Schedule No. 100 the "Price, June 7, 1954 (¢ per MCF)" of 11 cents (R. 225).[8]

9. By letter order dated February 7, 1955, the FPC notified Texaco that its rate filings of September 24, 1954 in connection with its Rate Schedule No. 100 "have been accepted for filing" (R. 138-144).[9]

The letter also contained the usual Commission reservation that "the acceptance for filing" shall not

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[8] There is no question that the Commission intended to establish the 11 cent rate as Texaco's effective rate for these sales. In Order 174A issued July 16, 1954, 19 Fed. Reg. 4534 (1954), the Commission said, "a reasonable cut-off date [June 7, 1954] should be fixed in order to avoid confusion in attempting to readjust past transactions." The position of the majority that the effective rate was to be the price being charged and paid on June 7, 1954 was emphasized by Commissioner Digby in his dissent. He said: "In freezing the producers' rate as of June 7, 1954, they are deprived of any opportunity to file as an original rate schedule a sales contract in which the price of gas has increased since June 7, 1954."

[9] Language used in this letter order further confirms the deliberate intent of the Commisison to accept and establish the 11 cent rate being collected on June 7, 1954 as Texaco's effective filed rate. After calling attention to the possibility that the rate schedule might contain automatic price escalation clauses, the letter warned that when they were "invoked to change the *rates being paid on June 7, 1954*" the rate changing requirements of the Act and the Regulations must be followed (R. 139, emphasis supplied).

be construed as constituting "approval of any rate", which, of course, means only that acceptance is not to be construed as a finding that the rate is also "just and reasonable." [10]

10. Texaco forwarded to Cities a copy of the FPC February 7, 1955 acceptance letter.[11] Cities continued to pay Texaco at the 11 cent rate it had been paying since January 1, 1954. Shortly thereafter, Texaco received a letter from Cities dated May 13, 1955, stating that it could make payments for natural gas "only pursuant to filed Rate Schedules" and requesting copies of documents which had been filed with the FPC (R. 124). Texaco immediately replied by letter dated May 17, 1955, pointing out that most of the documents had already been furnished and forwarded a copy of Texaco's Application for Certificate of Public Convenience and Necessity. Cities was also reminded that it had been notified previously that Texaco's Application had been docketed as FPC Docket No. G-4824.

11. Less than a month later, by order dated June 7, 1955, the Commission gave due notice that a public hearing would be held on Texaco's certificate application on June 29, 1955 (R. 185). All interested parties

[10] The Delaware courts apparently failed to appreciate the purpose of including this reservation in an "acceptance" letter order. The reasons why this standard "approval" reservation does not detract from the finality of the Commission's acceptance of the specific rate for filing are explained at length in the brief of Pan American in companion case No. 80 at pages 33-35 and footnote 18, page 34, to which reference is hereby made.

[11] Of course, the minutes of the Commission's formal action of December 29, 1954 accepting the 11 cent rate as the filed rate and the letter order of the Commission dated February 7, 1955 notifying Texaco of such acceptance are matters of public record, 18 C.F.R. §§ 1.36(c)(3) and (6).

were notified that "Protests or petitions to intervene may be filed * * * on or before June 27, 1955." Although others intervened (R. 185), Cities entered no protest nor did it intervene or appear at the hearing which was completed in November, 1955.

12. By order issued December 5, 1955, the Commission found that Texaco's sales of natural gas to Cities "are required by the public convenience and necessity" (R. 186) and issued a certificate of public convenience and necessity "authorizing the sales by Applicant" (R. 187). The certificate imposed no condition with respect to the filed rate of 11 cents. (R. 179-188).[12] By letter dated December 16, 1955, Texaco accepted the certificate and sent Cities a copy of the acceptance letter (R. 191). Cities remained silent, as it had with respect to Texaco's rate filing, pursued no course of action under Section 19 of the Act, and continued to pay at the 11 cent rate for the now permanently and unconditionally certificated sales.

13. On June 13, 1957, pursuant to Section 4(d) of the Act and the Commission's Regulations, Texaco forwarded to the FPC for filing a notice of change of rate from the then effective 11 cent rate to 11.055 cents (R. 144-147). This was designated Supplement No. 5 to

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[12] This action obviously precludes any claim by Cities that the 11 cent rate was conditional on the Minimum Price Order being held to be valid. Conditional rates cannot be established by agreement of the parties, but only by order of the Commission under Section 7(e) of the Act which provides, in part: "The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions *"as the public convenience and necessity may require."* (Emphasis supplied). Of course, such conditions must be specifically set forth. *Sunray Mid-Continent Oil Co.* v. *Federal Power Commission*, 270 F. 2d 404 (10th Cir. 1959).

Texaco's FPC Rate Schedule No. 100. By clause 13 in the June 16, 1949 contract, Cities had agreed to reimburse Texaco for ½ of any increase in production taxes (R. 78) and the State of Kansas had imposed a severance tax equal to one per cent of the price of the gas at the wellhead. Such additional tax was to become effective July 1, 1957 (R. 146). Texaco's filing made it clear that the .055 cent increase represented ½ of one per cent of Texaco's filed rate of 11 cents (R. 146). Pursuant to FPC Regulations, Cities was served with copy of this filing (R. 144). Again, Cities filed no comments or protest.

14. On August 21, 1957, the Commission duly convened and after consideration accepted Texaco's change in rate (R. 226-229). Table 2 attached to the official minutes of this FPC meeting and entitled "Summary of Independent Producer Rate Filings—Changes in Rate Filings Previously Reported to the Commission," shows that the rate for Texaco's FPC Rate Schedule No. 100 was changed *from 11 cents* per Mcf to 11.055 cents and that the "Effective Date" for the new rate was July 1, 1957 (R. 229).[13]

15. By letter order dated August 29, 1957, the FPC notified Texaco of the Commission's action accepting the change in rate from 11 cents to 11.055 cents and that same "shall be effective as of the dates shown."

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[13] If Cities had any lingering doubt that the Commission initially filed and established the rate of 11 cents it must have been dispelled by this action of the Commission. Unless the Commission had initially accepted the 11 cent rate as Texaco's effective filed rate, it could not have accepted the 0.55 cent increase which Texaco clearly showed represented ½ of one per cent of the 11 cent initial rate which was still in effect July 1, 1957.

(R. 157-158). The effective date for Texaco's new 11.055 cent rate was shown to be July 1, 1957 (R. 158).

16. Cities did not protest, challenge or object to the Commission's formal action of accepting this change in rate for filing, but, effective as of July 1, 1957, commenced paying the 11.055 cent rate.

17. On January 20, 1958, this Court in *Cities Service Gas Co.* v. *State Corporation Commission of Kansas*, 335 U.S. 391, reversed the decision of the Kansas Supreme Court which had upheld the Minimum Price Order.

18. On January 29, 1958, Cities made demand upon Texaco for refund of alleged "overpayments" being the difference between the amounts Cities had paid during the period from January 1, 1954 through December 22, 1957, and the amount it would have paid had the lower "contract" rate been in effect.

Cities' Collateral Attack Upon the Filed Rate and Texaco's Response

19. On June 18, 1958, Cities filed its complaint against Texaco in the Superior Court of the State of Delaware in and for New Castle County. The common law action was based on Cities' claim that its January 21, 1954 letter to Texaco, styled by Cities in its complaint as the "refund letter", together with the voucher checks merely referring to said letter constituted an "agreement" to "refund" in the event the Kansas 11 cent Minimum Price Order was judicially declared to be invalid (R. 52-59). Cities also advanced theories of restitution and unjust enrichment (R. 58). Cities' complaint, as originally filed, did not make reference to the interstate nature of the sales in relation to which refunds were sought, and likewise made

no reference to the fact that the supposed "refund letter" was filed with the Commission as Supplement No. 4 to Texaco's FPC Gas Rate Schedule No. 100. Nor did the original complaint make reference to any jurisdiction or action of the Commission with respect to these sales.[14]

20. Because of these omissions from Cities' original complaint, Texaco could neither successfully remove the action to the federal courts, nor could it effectively move to dismiss the complaint on grounds arising from the Natural Gas Act. (See page 48 of the brief of Pan American).

21. Texaco answered denying that the "refund letter", to which Texaco never agreed, constituted a contract to refund. It defended against Cities' complaint by setting out the provisions of the Natural Gas Act and the Regulations of the FPC requiring the filing of rates by independent producers, such as Texaco, and Texaco's compliance with such provisions (R. 59-68). Texaco cited the Commission's formal action and order accepting the 11 cent rate; the Commission's orders issuing notice of hearing, and then after hearing, issuing unconditioned Certificates of Public Convenience and Necessity authorizing the sales in question; the Commission's order accepting the filing of the Kansas Order and the "refund letter" as supplements to Texaco's Rate Schedule; and the Commission order accepting the subsequent increase

[14] As Cities states on page 8 of its brief in opposition to Texaco's Petition for Writ of Certiorari:

> "At no place in Cities' complaints is any reference made to, or reliance placed upon, the Natural Gas Act or any orders, rules or regulations issued thereunder or any action taken pursuant thereto. . . ."

from 11 cents to 11.055 cents per Mcf. Texaco then showed that Cities had filed no protest nor raised any objection to any of these reviewable orders of the Commission, and that Cities did not apply for rehearing upon or petition for review for modification or the setting aside of any of these orders under the exclusive mode prescribed by Section 19 of the Act.

22. On January 30, 1959, after supplementing the record to establish these matters, Texaco filed its Motion for Summary Judgment in the Superior Court action, challenging the jurisdiction of the state court (R. 170-171). Cities, in its brief filed in opposition to this motion, conceded for the first time that "It can claim no rate as a legal right that is other than the filed rate, whether fixed or accepted by the Commission, and not even a court can authorize commerce in a commodity on other terms." (R. 773). By such concession, Cities acknowledged that the success of its action depended upon the state court's finding that the filed rate was different from the 11 cent rate accepted for filing and filed, by the Commission. Thus, Cities' recovery necessitated a collateral attack upon rate and certificate orders of the Federal Power Commission.

The Decisions of the Delaware Courts

The Pan American brief at pages 11 through 14 accurately details the holdings of both Delaware courts below as those decisions affect the common interests of each petitioner here. Texaco believes that the few factual differences existing between its relations with Cities and the Commission as compared with Pan American's relations with the same parties are not significant to a decision of these matters on

the theories jointly advanced by petitioners in the courts below or to a decision on the arguments advanced here.

However, Texaco does contend that, had the Delaware courts taken cognizance of the additional fact that the Commission also had issued a certificate of public convenience and necessity to Texaco, under Section 7 of the Act, authorizing its sales to Cities unconditioned as to the Commission-filed rate of 11 cents already effective under Section 4 of the Act, those courts then would have appreciated the significance and correctly interpreted the conclusiveness and binding effect on them of the unprotested and now final Commission actions accepting and filing rates under Section 4 and of Commission orders authorizing commerce at those rates under Section 7.

The Delaware courts also failed to attribute any significance to the fact that the very "refund letter" upon which Cities "contract" action is based was filed by the Commission as a supplement to Texaco's Rate Schedule. Had they considered this fact, they would have realized that either an action based on that filed document or an action claiming restitution for payments in excess of an authorized filed rate are nothing more than attempts to enforce liabilities or duties arising under and created by the Natural Gas Act, and that such actions are, therefore, subject to the exclusive jurisdiction of federal district courts under Section 22 of the Act.

Furthermore, in purporting to establish their jurisdiction the Delaware courts admitted that, in order to determine whether they had jurisdiction to hear this action, they actually first had to make a determination of the very merits of the case (R. 12, 14). This cir-

cular reasoning resulted from the courts' admissions that no rate other than the filed rate could be charged, and therefore it was necessary for them to determine if the filed rate and the "contract" rate were identical. If so, the Delaware Superior Court could entertain the suit. But, if the courts' version of the filed rate differed from the contract rate, the courts reasoned that Cities' "common law" action would not lie because it would then be inconsistent with "federal law and regulation" (R. 14).

As to the period prior to June 7, 1954, the Delaware courts held that, "Since there were no filed rates with the FPC, there was no effective governmental price regulation in this field and as between the parties, the rates specified in their contracts would govern." (R. 18).

The Delaware Supreme Court entered final judgment on March 18, 1960, but stayed the same pending final order of this Court in any certiorari proceedings (R. 47-48).

SUMMARY OF ARGUMENT

At pages 19 through 38 of its brief, Pan American demonstrates that the Natural Gas Act provides a complete and exclusive scheme of rate regulation through the actions and orders of the Federal Power Commission. At pages 38 through 47 Pan American establishes that the finality attributed to rate orders of the Commission is such that only by following the specific and exclusive review procedures prescribed by Section 19, can those orders be modified or set aside. Texaco adopts each of these arguments, and, therefore, limits Section I of this brief to a showing of reasons why the "nullity" theory espoused by the Delaware

courts is erroneous when considered in conjunction with the Commission's actions and orders filing Cities' "refund letter" as a part of Texaco's Rate Schedule and issuing to Texaco an unconditioned permanent certificate of public convenience and necessity authorizing its sales to Cities.

Texaco further adopts the arguments of Pan American at pages 47 through 57—that the state courts are precluded from enforcing Cities' alleged claim because Section 22 lodges exclusive jurisdiction in federal district courts. In addition, in Section II hereof it is shown that the congressional intent, demonstrated by the selective passage of regulatory legislation in the years immediately preceding enactment of the Natural Gas Act, fully supports petitioners' position, and that Congress intended Section 22 to vest exclusive jurisdiction in the district courts of all suits or actions relating to rates for the sales of natural gas over which the Commission has been given jurisdiction, whether such claims be for "overpayments" or otherwise.

ARGUMENT

I. ORDERS AND ACTIONS OF THE FEDERAL POWER COMMISSION MUST BE REVIEWED PURSUANT TO EXPRESS STATUTORY PROVISIONS AND CANNOT BE COLLATERALLY SET ASIDE AS VOID

Only infrequently do courts pause, carefully consider and then delineate the fine but meaningful distinction involved where an act that is allegedly "void" is in fact and law an act that was merely once "voidable." Because the vastly different effect which flows from one condition as opposed to the other is not always important to, or dispositive of, matters before them, courts will often loosely interchange terms such as "void" and "voidable." However, the difference

between an allegedly "void" act or order and one which was merely once possibly "voidable" is real and is significant. See 92 C.J.S. *Void and Voidable*, §§1, *et seq.* (1955).

By failing to honor this distinction the Delaware courts in their decisions below have swept aside the comprehensive uniform regulation established by Congress through the Natural Gas Act.

As detailed in Texaco's discussion of its factual situation, Cities had notice at least four separate times (R. 138, 155, 157, 179) of actions and orders of the Commission establishing the rate of 11 cents being paid on June 7, 1954 as the effective filed and certificated rate for Texaco's sales to Cities. Each of these rate actions and orders as well as the order issuing a certificate to Texaco was reviewable under the procedures established by Section 19 of the Act. *Atlantic Refining Company* v. *New York Public Service Commission*, 360 U.S. 378 (1959) (Cateo); *United Gas Pipe Line Company* v. *Memphis Light, Gas & Water Division*, 358 U.S. 103 (1958); *United Gas Pipe Line Company* v. *Mobile Gas Service Corporation*, 350 U.S. 332 (1956); *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F. 2d 860 (10th Cir. 1955) *cert. denied* 358 U.S. 837 (1958) (The *Magnolia* Case).

The Delaware Supreme Court solved the problem created by Cities' act of sleeping on its rights and failing to seek review of these Commission orders authorizing commerce by Texaco at the 11 cent rate by declaring these acts and orders of the Commission to be null and void. Despite Cities' successful pursuit of such statutory review under identical circumstances in the *Magnolia* case, the Delaware court

overlooked Cities' failure to follow the statutory remedy in these matters. It is then the opinion of the Delaware Supreme Court that when the Federal Power Commission issues an order which an affected party considers erroneous it is sufficient for that party to ignore the order, to disregard the exclusive review requirements of the Act, and, at such later date as it may choose, to seek relief from the burden of that order in a state court. The Delaware Supreme Court's theory is that if, after review of the Commission's action and the applicable law, it agrees with the party that the order was possibly erroneous or once "voidable," it too will ignore the order and grant the relief requested.

Such a theory of concurrent and collateral review enervates Section 19 of the Act and is diametrically opposed to this Court's delineation of the specific, complete and exclusive mode of review provided by such a statute. *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320 (1958). The complete confusion and pandemonium deriving from a system of individual speculation on the correctness of regulatory agency orders, augmented by state court second guessing, is clearly contrary to the uniform regulatory process Congress sought to create under the Natural Gas Act.

If the theory advanced by Cities and the theory adopted by the Delaware Supreme Court that the allegedly erroneous orders of the Federal Power Commission may be treated as "null" and "void" collaterally, is correct, then a long line of appellate court cases has been set aside and Section 19 of the Act has been rendered purposeless. See *City Service Gas Co.* v. *Federal Power Commission, supra; Natural Gas Pipe Line Company of America* v. *Federal Power Commission*,

253 F. 2d 3 (3rd Cir. 1958); *Phillips Petroleum Company* v. *Federal Power Commission*, 258 F. 2d 906 (10th Cir. 1958); *Kerr-McGee Oil Industries, Inc.* v. *Federal Power Commission*, 260 F. 2d 602 (10th Cir. 1958). Under the specific provision of Section 19(b) of the Act, and the decisions construing it, only those persons who are aggrieved by a Commission order can appeal from that order, and only final definitive orders fixing rights or determining liabilities are appealable. Therefore, under the "nullity" theory of the Delaware courts that the orders establishing the rates or the rates themselves were void in the above cases, those orders neither fixed rights, determined liabilities nor caused the parties to be aggrieved so that the federal courts would have lacked jurisdiction under the Act to review any of those orders. Thus, the "nullity" theory of the Delaware courts eliminates the need for and purpose of Section 19.

A. The Theory of the Courts Below Is Contrary to This Court's Catco Decision

Section 7(c) of the Natural Gas Act provides that no one may initiate sales in interstate commerce for resale until that party has been issued a certificate of public convenience and necessity by the Commission. For those sales which were being made in 1954 when the Commission instituted active jurisdiction over independent producers under the Natural Gas Act, it was ordered that applications for certificates be submitted and that certificates be obtained. Texaco, pursuant to these orders, submitted its application and was issued a certificate, unconditioned as to price, for its sales to Cities (R. 173-190).

In the *Catco* case, (*Atlantic Refining Company* v. *New York Public Service Commission, supra*) this

Court said at page 391 that Section 7 of the Natural Gas Act "requires the Commission to evaluate all factors bearing on the public interest" including "price proposals of producers." This determination requires the exercise of the special expertise of the Federal Power Commission before it authorizes the commencement of, or in the case of grandfather certificates, the continuation of interstate commerce at these rates.

Therefore, in addition to setting aside two acts of the Commission accepting and making effective rates tendered under Section 4, the Delaware Supreme Court's nullification of the action of the Commission certificating, permanently and unconditionally, Texaco's sales to Cities at the 11 cent rate, constituted a substitution by that state court of its "expertise" of what "is or will be required by the present or future public convenience and necessity" for that of the Commission. This results in the abrogation of regulatory powers which are essential to the proper administration of the Natural Gas Act and in effect deprives the regulatory body established by Congress of the exclusive exercise of its expertise which is the principal reaon for its existence, whether its acts are pursuant to Section 4 or to Section 7.

B. The Theory of the Courts Below Is Contrary to This Court's Mobile Decision

The "refund letter" upon which Cities' suit is based in the Delaware courts has been filed by the Federal Power Commission as Supplement No. 4 to Texaco's Rate Schedule No. 100. In this letter, dated January 21, 1954, Cities stated that it would "pay for all gas purchased by it in the Kansas Hugoton Field" at a "minimum price of not less than eleven cents" (R. 153-

154). A copy of this letter was submitted by Texaco in response to the request of the Commission (R. 149-150), and after due consideration the Commission filed it as a supplement to Texaco's Rate Schedule (R. 155-156).

In the January 21, 1954 letter, Cities acknowledged that it was paying a rate of 11 cents and would continue to do so, but it also sought to provide for an automatic change in that rate upon the occurrence of certain contingent events. At the time the Commission filed this letter it specifically provided in its order, a copy of which Cities received, that any provisions for automatic changes in rate contained in the document filed would, when "invoked to change the rates being charged June 7, 1954," require compliance with the notice provisions of Section 4(d) of the Natural Gas Act (R. 155).

These facts result in the following logical sequence:

(1) Cities was paying a rate of 11 cents at the time it wrote the letter (R. 154); Cities was also paying 11 cents on June 7, 1954 (R. 229).

(2) Cities sought to provide in the January 21, 1954 "refund letter" for a further automatic change in the 11 cent rate upon the happening of certain contingent events (R. 154).

(3) The Commission upon filing this letter specifically provided that if any change were to be made in the 11 cent rate being paid on June 7, 1954 such change in rate could not be effected without an additional filing under Section 4(d) giving at least 30 days prior notice to the Commission (R. 155).

(4) No change or notice of change of the rate of 11 cents being paid on June 7, 1954 has ever been filed with the Commission to reduce that rate for the period involved herein. The only change was *from* 11 cents to 11.055 cents filed by Texaco (R. 145-147) and accepted and made effective by the Commission (R. 157-158).

(5) Cities therefore is either bound by the theory it advanced in the courts below—a theory adopted by the Delaware Supreme Court—that the order of the Commission accepting and filing the "refund letter" is one of those orders which, because it is erroneous, or is deemed erroneous, need not be challenged under Section 19. If the order is a "nullity" then the January 21, 1954 letter is not on file with the Commission and Texaco's position is exactly the same as that of the petitioner in No. 80. (See page 14, par. (1), Brief of Pan American.)

(6) If the action of the Commission is not a nullity, then it is clear that there has been no change from the 11 cent rate filed by the Commission to the lower rate claimed by Cities because no change in rate notice has ever been filed pursuant to Section 4(d). This Court has held that the notice requirement of Section 4(d) is essential,[15] *United Gas Pipe Line Company* v. *Mobile Gas Service Corporation*, 350 U.S. 332 (1956). In

[15] Section 4(d) provides *inter alia*: "Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate . . . except after thirty days notice to the Commission and to the public. . . ." In the order filing the January 21, 1954 letter the Commission specifically reiterated, and did not waive, this notice requirement (R. 155).

analyzing the *Mobile* decision two years later in the decision of *United Gas Pipe Line Company* v. *Memphis Light, Gas & Water Division*, 358 U.S. 103, this Court said at page 112:

> "'Mobile makes it plain that 'Section 4(d) on its face indicates no more than that *otherwise valid changes* cannot be put into effect without giving the required notice to the Commission, 350 U.S. at 339-340.'" (Emphasis added).

Under either theory Cities' efforts are blocked by this Court's clear delineation of the law in the *Mobile* case. If Cities claims that the Commission action in filing the January 21, 1954 letter is a nullity and that it is actually suing on the letter as a common law contract, the language quoted immediately above precludes such suit because agreements as to the price for sales of gas in interstate commerce, no matter how "otherwise valid," are not effective until submitted to, accepted, and filed by the Commission. If Cities contends that the letter is validly filed, the *Mobile* decision and the Act, require prior notice before "otherwise valid" changes in rates for interstate sales can be effected. Otherwise, Texaco and the thousands of other natural gas producers could avoid the rate changing requirements of Section 4(d) of the Act by merely bringing common law contract actions in state courts for recovery of increases in rates provided by the automatic price escalation clauses in their gas sales contract.[16]

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[16] As preposterous as this regulatory gap may seem, it is exactly what the Delaware courts have sanctioned. The Delaware Supreme Court said:

> "If under the Natural Gas Act a gas producer and a distributor may agree to fix the rate, and from time to time to

II. CONGRESS INTENDED TO PRECLUDE STATE COURTS FROM ENFORCING THE REPAYMENT OF AMOUNTS ALLEGEDLY PAID IN EXCESS OF A RATE FILED BY THE COMMISSION

Section 22 of the Natural Gas Act provides that the district courts of the United States ". . . shall have *exclusive* jurisdiction . . . of all suits in equity and actions at law, brought to enforce any liability or duty created by" the Act, and the Regulation and orders promulgated under that Act. (Emphasis added).

Cities acknowledges, as do the courts below, that no rate may be paid for natural gas sold for resale in interstate commerce other than the rate filed with the Federal Power Commission (R. 38, 775). Therefore, Cities' suit is an action brought to force repayment of amounts which Cities contends it paid in excess of that filed rate. The acceptance of amounts in excess of the rate on file is expressly forbidden by Section 154.21 of the Regulations, is contrary to the whole purpose of the Act, and the duty to repay such amounts arises from the Act, despite seemingly parallel common law causes of action. *Remar* v.

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change it, *absent any proceeding before the Commission to regulate the rate*, why may they not agree that the rate to be paid shall be the contract rate if the rate imposed by a State Commission shall be held invalid? This, in effect, was what the parties here agreed upon. (Emphasis added.)

"If so, it seems to us that the claims here are not founded upon any liability created by the Natural Gas Act, but upon a private contract deriving its force from state law." (R. 41)

From this false premise—that the Commission doesn't "regulate the rate" until it issues an order finding the rate to be "just and reasonable" under Sections 4(e) or 5(a)—the court reasoned that it had jurisdiction to enforce recovery of Cities' claim which is based upon its "refund letter" even though that letter had been filed by the Commission as part of Texaco's Rate Schedule and even though no notice of change in rate had been filed pursuant to Section 4(d) of the Act.

Clayton Securities Corp., 81 F. Supp. 1014 (D. Mass. 1949). See also *United Gas Pipe Line Co.* v. *Willmut Gas & Oil Co.* 231 Miss. 700, 97 So. 2d 530 (1957) *cert. denied* 357 U.S. 937 (1958).

The reports and debates on the bill which ultimately became the Natural Gas Act, H.R. 6586, 75th Cong. 1st Sess. (1937), contain no references which elaborate on Section 22 of the Act other than the remarks of sponsors that the Section provides for the "jurisdiction of offenses and enforcement of liabilities and duties." See H.R. Rep. No. 709, 75th Cong. 1st Sess. (1937); S. Rep. No. 1162, 75th Cong. 1st Sess. (1937); 81 Cong. Rec. 3922, 6721-6733, 6740, 8670, 8918, 9312-9317 (1937); 83 Cong. Rec. 8343-8347 (1938). The statute, of course, is explicit in lodging "exclusive jurisdiction" with the federal judiciary. Here again arises "a case for applying the canon of construction of the wag who said, when the legislative history is doubtful, go to the statute." *Greenwood* v. *United States*, 350 U.S. 366, 374 (1956).

Despite the clear, concise language of the Act the Delaware courts, after analyzing and interpreting the various formal actions and the orders of the Commission, assumed jurisdiction to enforce the liability they found to exist as a result of this interpretation. The state courts contend that the common law form of Cities' initial pleading creates a parallel and concurrent jurisdiction in them to enforce the duty to refund which they feel exists.[17]

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[17] The Superior Court said:

> "The plaintiff may not recover if its right to recover depends on a rate schedule which is contrary to the Natural Gas Act or any rule, regulation or order thereunder. But that is not

Review of Congressional action and the intention revealed by that action in relation to a series of legislative measures enacted between 1933 and 1938 destroys the concurrent jurisdiction theory adopted by the Delaware courts. During this period, Congress enacted or expanded six major items of legislation which contained vastly similar jurisdictional provisions. But in each of these legislative endeavors Congress carefully and explicitly provided for "concurrent" jurisdiction where that was desired and "exclusive" jurisdiction where that was its intention.

In Section 22 of the Securities Act of 1933, 48 Stat. 74, 15 U.S.C. §§ 77a-84 (1934 Edition), Congress provided that the district courts of the United States shall have jurisdiction of offenses and violations under the Act, and jurisdiction "*concurrent* with state and territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by" the Act (15 U.S.C. § 77v, 1934 Edition, emphasis added). One year later when it re-examined this same sphere of business activity and enacted the Securities Exchange Act of 1934, 48 Stat. 881, 15 U.S.C. §§ 78a-78jj, Congress drafted a jurisdictional provision exactly similar in pertinent parts to that later used in the Natural Gas Act. Section 27, 15 U.S.C. § 78aa, contains the "exclusive jurisdiction" language as a result of due consideration by Congress of the fact that such language precluded state court jurisdiction. 78 Cong. Rec. 8099, 8571 (1934). The significance which must be accorded such deliberate selectivity of legislative endeavor has

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to say that the action is based on a liability or duty created by such Act. Plaintiff merely asserts a cause of action which may not be *inconsistent with* federal law or regulation." (R. 14, emphasis added). The Delaware Supreme Court agreed (R. 41).

been judicially recognized. *American Distilling* v. *Brown*, 295 N.Y. 36; 64 NE 2d 347 (1945).

Having recognized the distinctions and exclusions created by the two different forms of statutory language, Congress again demonstrated its intention to be selective in its creation and limitation of jurisdiction. House Bill H.R. 5423, 74th Cong., 1st Sess. introduced in 1935 was originally drafted with three titles. As subsequently enacted on August 26, 1935 a portion of the original bill became Section 25 of the Public Utility Holding Company Act of 1935, 49 Stat. 835, 15 U.S.C. § 79y providing that district court jurisdiction under the Act would be "concurrent with state and territorial courts".

Other portions of H.R. 5423 were enacted that same day into the Federal Power Act, 49 Stat. 863 (1935), 16 U.S.C. §§ 791a-825r. Section 317 of the Federal Power Act, 16 U.S.C. § 825p, despite the fact that it emanated from the same basic bill, and was enacted the same day, did not use the "concurrent" language of the Public Utility Holding Act but instead provided for "exclusive jurisdiction" in the district courts.

In 1938, when Congress broadened the authority of the Federal Power Commission by extending its jurisdiction to cover natural gas, it chose to include in Section 22 of the Natural Gas Act the "exclusive jurisdiction" language rather than the "concurrent" language. Thus, Section 22 of the Natural Gas Act was intended to exclude state court jurisdiction.

The deliberate and selective method by which the Congress delineated the scope of federal jurisdiction in these various major legislative efforts enacted dur-

ing the same period underlines the intention of the Congress to provide exclusive federal control of the matters before this Court. The decisions of the Delaware courts not only do violence to the plain language of the Natural Gas Act; they open the way to multiple interpretations of actions and orders of the Federal Power Commission and disrupt the Commission's regulatory powers.

The Delaware courts, when earlier faced with a proceeding calling into issue the language of Section 27 of the Securities Exchange Act of 1934, which is exactly the same in pertinent language to Section 22 of the Natural Gas Act, said:

> "This issue lies solely within the exclusive jurisdiction of other tribunals under Section 27 of the Act, and this court will not usurp that jurisdiction or any portion thereof. It is understandable why the legislative intent as to jurisdiction was so clearly expressed under Section 27, for, if uniformity of enforcement in the true sense is the object of the purpose to be attained, centralization of judicial decision and discretion should be as designated . . ." (*Standard Power and Light Corp.* v. *Investment Associates, Inc.* 29 Del. Ch. 593, 51 A. 2d 572 (1947).

The decisions below, if sustained, will preclude uniform enforcement and centralized decision of matters arising under the Natural Gas Act, and will open to collateral attack, in the courts of the fifty states, past and future orders of the Federal Power Commission, contrary to clear congressional intent.

CONCLUSION

It is under the authority and regulation of the Natural Gas Act that the subject interstate sales of natural gas for resale are made. Section 19 of that Act provides the exclusive mode for review of, or attack upon, orders of the Federal Power Commission establishing duties and fixing rights. Section 22 prescribes that exclusive jurisdiction to enforce the rights, duties and liabilities flowing from these actions and orders of the Commission shall be in the federal judiciary. This Court's decisions have repeatedly recognized and enforced the single, uniform, comprehensive regulatory scheme established by the Act. Statutory language and case law preclude the collateral attack and concurrent jurisdiction sought to be established by the decisions below.

For the reasons hereinabove set forth, it is respectfully submitted that the judgment of the Supreme Court of Delaware should be reversed and vacated, and that the Writ of Prohibition prayed for in that court should issue.

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APPENDIX

APPENDIX

A. The Natural Gas Act, 52 Stat. 821, as amended, 15 U.S.C. 717, *et seq.*, provides in pertinent part:

* * * * * * * * * * *

Rates and Charges; Schedules; Suspension of New Rates

Sec. 4 (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from June 21, 1938), and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such

rate, charge, classification, or service, or in any rule, regulations, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such sechedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded

and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible. [52 Stat. 822 (1938); 15 U.S.C. § 717c].

Fixing Rate and Charges; Determination of Cost of Production or Transportation

Sec. 5 (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order:

Provided however, That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas. [52 Stat. 823 (1938); 15 U.S.C. § 717d].

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Extension of Facilities; Abandonment of Service

Sec. 7. (a) Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided,* That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such

natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers. [52 Stat. 824 (1938); 15 U.S.C. § 717f(a)].

(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment. [52 Stat. 824 (1938); 15 U.S.C. § 717f(b)].

(c) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on the effective date of this amendatory Act, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after the effective date of this amendatory Act. Pend-

ing the determination of any such application, the continuance of such operation shall be lawful.

In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest. [52 Stat. 825 (1938), as amended, 56 Stat. 83 (1942); 15 U.S.C. § 717f(c)].

(d) Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require. [56 Stat. 84 (1942); 15 U.S.C. § 717f(d)].

(e) Except in the cases governed by the provisos contained in Subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized

by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require. [56 Stat. 84 (1942); 15 U.S.C. § 717f(e)].

(f) The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization. [56 Stat. 84 (1942); 15 U.S.C. § 717f(f)].

(g) Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company. [56 Stat. 84 (1942); 15 U.S.C. § 717f(g)].

(h) When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action

or proceeding in the courts of the State where the property is situated: *Provided*, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000. [61 Stat. 459 (1947); 15 U.S.C. § 717f(h)].

* * * * * * * * *

Administration Powers of Commission; Rules, Regulations, and Orders

Sec. 16. The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things such rules and regulations may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours. [52 Stat. 830 (1938); 15 U.S.C. § 717o].

* * * * * * * * *

Rehearing; Court Review of Orders

Sec. 19 (a) Any person, State, municipality, or state commission aggrieved by an order issued by the Commis-

sion in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court

shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part.

No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in Section 1254 of Title 28.

(c) The filing of an application for rehearing under subsection (a) of this section shall not unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order. [52 Stat. 831 (1938); 15 U.S.C. § 717r].

* * * * * * * * * *

Jurisdiction of Offenses; Enforcement of Liabilities and Duties

Sec. 22. The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation or order thereunder. Any criminal proceeding shall be brought in the district wherein any chapter or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder may be brought in any such district or in the district wherein the defendant is an inhabitant, and process in such cases may be served wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254 and 1291-1294 of Title 28. No costs shall be assessed against the Commission in any judicial proceeding by or against the Commission under this chapter. [52 Stat. 833 (1938); 15 U.S.C. § 717u]

B. The Federal Power Commission Regulations under the Natural Gas Act, 18 C.F.R., provide in pertinent part:

* * * * * * * * * *

154.21 Effective tariff

The effective tariff of a natural-gas company shall be the tariff filed and posted pursuant to the requirements of this part, and permitted by the Commission to become effective. No natural-gas company shall directly or indirectly, demand, charge or collect any rate or charge for or in connection with the transportation or sale of natural

gas subject to the jurisdiction of the Commission, or impose any classifications, practices, rules or regulations, different from those prescribed in its effective tariff and executed service agreements on file with the Commission, unless otherwise specifically provided by order of the Commission.

• • • • • • • • • • •

154.91 Applicability

(a) *Definition.* An "independent producer" as that term is used in this part means any person as defined in the Natural Gas Act who is engaged in the production or gathering of natural gas and who transports natural gas in interstate commerce or sell natural gas in interstate commerce for resale, but who is not primarily engaged in the operation of an interstate pipeline.

• • • • • • • • • • •

154.92 Filing of Rate Schedules by Independent Producer

(a) Every independent producer who, on or since June 7, 1954, has engaged in the interstate transportation or sale of natural gas subject to the jurisdiction of the Commission shall on or before December 1, 1954, file with the Commission rate schedules, as defined in Section 154.93 hereof, setting for the terms and conditions of service and all rates and charges for such transportation or sale effective on June 7, 1954. To each such rate schedule there shall be attached a statement showing actual billing for a recent month in sufficient detail to show how the billing amount is determined.

(b) Every independent producer who, subsequent to the effective date of these rules, proposes to initiate an interstate transportation or sale of natural gas subject to the jurisdiction of the Commission to an existing or new customer shall file with the Commission not less than 30 days nor more than 90 days prior to the date such transportation or sale is proposed to be initiated a rate schedule, as

defined in Section 154.93 hereof, setting forth the terms and conditions of service and all rates and charges for such such transportation or sale. To each such rate schedule there shall be attached a statement showing estimated sales and billing for the first month of service, in sufficient detail to show method of billing and prices used. The statement shall also give the proposed date of commencement of service. A complete copy of all material shall be furnished to each purchaser under the rate schedule. With each such filing there shall be submitted a list of parties to whom such material has been mailed.

(c) Every independent producer who transports or sells less than 100,000 Mcf annually of natural gas subject to the jurisdiction of the Commission may, in lieu of the requirements of paragraphs (a) and (b) of this Section file a statement showing (1) the approximate annual volume involved, (2) the rate charged therefor, (3) the name of the purchaser, and (4) the geographical location (field, county, and State) at which delivery is made.

154.93 Rate Schedule Defined

For the purpose of Sections 154.92 through 154.101 hereof "Rate Schedule" shall mean the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954, showing the service to be provided and the rates and charges, terms, conditions, classifications, practices, rules and regulations affecting or relating to such rates or charges, applicable to the transportation of natural gas in interstate commerce or the sale of natural gas in interstate commerce for resale subject to the jurisdiction of the Commission.

154.94 Changes in Rate Schedules

(a) No change shall be made in any rate, charge, or service in effect on and after June 7, 1954, for the interstate transportation or sale of natural gas in interstate

commerce subject to the jurisdiction of the Commission by any independent producer required to file rate schedules pursuant to Section 154.92 hereof, without first filing a change in rates pursuant to Section 4(d) of the Natural Gas Act and in accordance with this section.

(b) Every change in any rate schedule, rate, charge, classification or service effective or applicable to a sale subject to the jurisdiction of the Commission as of June 7, 1954, and on file with the Commission, or required to be filed pursuant to Section 154.92, or in any rate schedule, rate, charge, classification or service effective or applicable to a sale subject to the jurisdiction of the Commission initiated subsequent to June 7, 1954, on file with the Commission, or required to be filed with the Commission pursuant to Section 154.92 shall be filed with the Commission in triplicate not less than 30 days nor more than 90 days prior to the date such change in rate schedule is proposed to be made effective. [Paragraph (b) amended by Order 202, 23 F. R. 3715, May 29, 1958]

(c) The operation of any provision of the rate schedule providing for future or periodic changes in the rate, charge, classification, or service after June 7, 1954, or the operation of any like provision in any initial rate schedule filed after June 7, 1954, shall constitute a change in rate schedule.

(d) Any change in any rate schedule, rate, charge, classification, or service provided in a rate schedule in effect on June 7, 1954, which by the terms of said rate schedule is to be operative after June 7, 1954, and prior to September 15, 1954, may be filed on less than thirty days' prior notice, subject nevertheless to the right of the Commission to suspend any such proposed change, if the Commission in any case shall, within thirty days after the date of filing, find it necessary to suspend such proposed change. If any such proposed change is suspended, the suspension period will begin with the designated effective date of such change.

(e) With each change in rate schedule there shall be submitted reasons, nature, and basis for the proposed change, and the following information and data: (i) the date on which such filing is proposed to be made effective; (ii) a comparative statement of sales made and revenues therefrom by months under the then effective rate schedule and under the proposed changed rate schedule, or rate, charge, classification or service contained therein for the 12 months immediately preceding and for the 12 months immediately succeeding the proposed effective date of the rate schedule tendered for filing. Actual data shall be used wherever possible and any estimates shall be so designated and explained. The statement shall be subdivided by customers and delivery points when more than one is involved.

(f) If the proposed change in a rate schedule will result in an increase in a rate or charge, there shall also be submitted a full statement in support of such increase. A complete copy of all material shall be furnished to each party to the rate schedule. With each such filing there shall be submitted a list of the parties to whom such material has been mailed.

(g) Every independent producer who transports or sells less than 100,000 Mcf annually of natural gas subject to the jurisdiction of the Commission may, in lieu of the requirements of the foregoing paragraphs in this section, file a statement showing (1) the approximate annual volume involved; (2) the rate charged therefor; (3) the name of the purchaser; and (4) the geographical location (field, county and State) at which delivery is made.

154.95 Oral agreements

If any rate schedule or change in a rate schedule is not in writing, its terms shall be reduced to writing and filed with the Commission. If the parties are not able to agree to the precise terms within a reasonable time, the applicant shall file, in triplicate, a statement of his understanding of the

agreement, serving a copy thereof on the other parties to the agreement. Such other parties, in the latter event, may subsequently file, in triplicate, their understanding of the agreement. [Section 154.95 amended by Order 202, 23 F. R. 3715, May 29, 1958]

154.96 Filing date

Filing date means the day on which a rate schedule, or a change in rate schedule, is received in the office of the Secretary of the Commission in compliance with the requirements of Section 154.92 through 154.99 of these Regulations.

154.97 Cancellation or termination

When a rate schedule or part thereof is proposed to be cancelled or is to terminate by its own terms and no new rate schedule or part thereof is to be filed in its place, the filing company shall notify the Commission of the proposed cancellation or termination at least 30 days prior to the proposed effective date of such cancellation or termination. With such notice the company shall submit a statement showing the reasons for the cancellation or termination and a certification that such notice of cancellation or termination has been served on the affected party or parties, together with names of parties to whom the notice has been mailed.

154.98 Waiver of notice requirements

Upon application and for good cause shown, the Commission may by order provide that a rate schedule or a change in rate schedule shall be effective on less than 30 days notice. The Commission upon request and for good cause shown may permit a rate schedule or a change in rate schedule to be filed prior to 90 days before the effective date.

154.99 Number of copies; material to be submitted with changes in rate schedules

Three copies of any rate schedule or part thereof, and material required by Section 154.95 to be filed therewith, and Notices of Cancellation or Termination submitted for filing, must be supplied to the Commission. The Commission reserves the right to request additional copies. All copies are to be included in a single package, insofar as possible, together with a letter of transmittal and other material and information required by these rules, addressed to the Secretary of the Federal Power Commission, Washington 25, D. C. Such letter of transmittal shall contain a complete list of all material being filed, properly designated so that each item is easily identifiable. [Section 154.99 amended by Order 195, 22 F. R. 1329, Mar. 5, 1957]

154.100 Rejection of rate schedule and material submitted for filing

The Commission reserves the right to reject any rate schedule or material submitted for filing which fails to comply with the requirements of Sections 154.92 through 154.99.

154.101 Acceptance for filing not approval

Acceptance for filing of any rate schedule or part thereof, or of a Notice of Cancellation or Termination, is not to be construed as approval by the Commission, nor to serve in lieu of any requirements under Section 7 of the Natural Gas Act.

154.102 Applicability of Sections 154.92 through 154.101

Sections 154.92 through 154.101 hereof shall be applicable only to those persons specified in Section 154.91 hereof.

* * * * * * * * * *

157.23 Applications for Certificates of Public Convenience and Necessity by Independent Producer

(a) Every independent producer of natural gas as that term is defined in section 154.91 who, on or since June 7, 1954, has engaged in the interstate transportation or sale of natural gas subject to the jurisdiction of the Commission, and who has not heretofore obtained from the Commission a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, as amended, shall, on or before December 1, 1954, file with the Commission an application (original and 7 copies) in accordance with sections 157.24 through 157.27. The Commission reserves the right to request additional copies. Independent producers whose sales of natural gas subject to the jurisdiction of the Commission amount in the aggregate to less than 1,000,000 Mcf annually, may, in lieu of the foregoing, file by December 1, 1954 an application (original and five copies) containing the information called for by Exhibit A. Pending action by the Commission on an application hereunder, the service for which authorization is sought shall be continued.

(b) No independent producer of natural gas shall, subsequent to the issuance of these rules, engage in any new service with respect to the transportation of natural gas in interstate commerce or sale of such natural gas resale in interstate commerce subject to the jurisdiction of the Commission without approval of the Commission, evidenced by a certificate of public convenience and necessity authorizing such transportation or sale upon application (original and 7 copies) pursuant to sections 157.24 through 157.27. The Commission reserves the right to request additional copies. Independent producers whose sales of natural gas subject to the jurisdiction of the Commission will amount in the aggregate to less than 1,000,000 Mcf annually may, in lieu of the foregoing, file an application (original and five copies) containing the information called for by Ex-

hibit A. Where the economic feasibility of a new pipe line or important extension or expansion of an existing pipe line depends upon proof of an adequate gas supply, all related applications necessary to effectuate the service shall be filed within time to enable the Commission to consider all related matters concurrently.

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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 81

TEXACO INC., *Petitioner*

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, AND THE HONORABLE ANDREW D. CHRISTIE, sitting as a Judge of that Court, *Respondents*

and

CITIES SERVICE GAS COMPANY, *Intervening Respondent*

On Writ of Certiorari to the Supreme Court of the State of Delaware

REPLY BRIEF OF PETITIONER TEXACO INC. TO BRIEF FOR CITIES SERVICE GAS COMPANY

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REPLY BRIEF OF PETITIONER TEXACO INC. TO BRIEF FOR CITIES SERVICE GAS COMPANY

Texaco Inc. (Texaco) and Pan American Petroleum Corporation (Pan American) have filed a single, joint answer to motions of Atchison, Kansas, *et al* and Colorado Interstate Gas Company for leave to file briefs *Amici Curiae*, as well as a joint reply to briefs in support of such motion. For purposes of this separate reply, Texaco hereby adopts the statement and the argument presented by Pan American in its reply to the main brief of Cities Service Gas Company

(Cities), the intervening respondent herein. Therefore, the argument in this reply by Texaco to Cities' brief will be supplementary in nature to that set out in the Pan American reply brief except where necessary to meet Cities' arguments which are concerned with Texaco's particular factual situation.

INTRODUCTORY STATEMENT

Cities seeks to create the illusion that the jurisdictional question before this Court upon review of the decision of the Supreme Court of Delaware involves consideration of neither the level of petitioners' filed rates nor the exclusiveness of the procedures prescribed by the Natural Gas Act governing review of orders by the Federal Power Commission (Cities Br., pp. 13-14, 19-21, 35-36).[1] Section I of this reply brief is directed to Part I of Cities' brief, and will show that both the filed rate and the exclusive review matters are before this Court because the state courts, in concluding that the Superior Court had jurisdiction to enforce Cities' claims, considered it necessary to, and actually did, decide the ultimate legal question on the merits—this ultimate question being the levels of petitioners' filed rates.

Parts I and II of the reply brief of Pan American (pp. 2-17) refute the theories and citations relied upon by Cities in Part II of its brief as support for Cities' claim that Section 22 of the Natural Gas Act has no application because of the form of action of Cities original suit. Texaco fully subscribes to all points and arguments of Pan American, and supplementary thereto, in Section II of this brief, points out several addi-

[1] Pertinent sections of the Natural Gas Act and the applicable Rules and Regulations of the Federal Power Commission promulgated thereunder are set out in the Appendix to Texaco's main brief.

tional reasons why Texaco believes that Section 19 and Section 22 reserve for federal courts exclusive jurisdiction to hear, determine and enforce all rate claims —including those filed in the form used by Cities.

Cities devotes Part III of its brief to the formulation of excuses to cover its failure in 1954, 1955 or 1957 to pursue the administrative remedies then available to it under the Natural Gas Act. By way of explanation, Cities claims that its so-called "refund letters" of January 21, 1954 created "agreements", and reasons that since June 7, 1954, the filed rates for both petitioners were conditional upon the validity or invalidity of the Kansas Order (Cities Br., p. 42). However, elsewhere in its argument, Cities attempts to distinguish Texaco's rate filings and certificate proceedings from those of Pan American. Therefore, although Texaco adopts Pan American's reply arguments with respect to the general legal principles applicable to Part III of Cities' brief (Pan Am. Reply Br., pp. 19-35), in Section III hereof Texaco reviews and discusses the legal effect of its particular rate filings and of the unconditioned certificate of public convenience and necessity issued by the Commission to Texaco under Section 7 of the Act.

I. THE ISSUES ON REVIEW INCLUDE THE LEVEL OF THE FILED RATES, THE NECESSITY TO EXHAUST ADMINISTRATIVE REMEDIES AND THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS OF APPEALS UNDER SECTION 19 OF THE ACT.

Texaco has sought review of the decisions below because the Delaware courts have not only misinterpreted Section 19 and Section 22 of the Natural Gas Act, but have also misconstrued key decisions of this Court in a manner which destroys the orderly administration and

effective enforcement of the Act with respect to rate matters. (Texaco Pet. for Cert., pp. 8-13). The Delaware Supreme Court decision to be reviewed shows that the reasoning and legal principles advanced in that decision to support the jurisdiction of Cities' claims, raise for review issues involving not only Section 22, but the entire regulatory scheme and rate enforcement plan of the Natural Gas Act.

The record is clear and all parties agree that Cities' complaints as originally filed were predicated on common law theories of contract, restitution and unjust enrichment and that these filings made no reference and placed no reliance on the Natural Gas Act or any orders, rules or regulations issued thereunder or any action taken pursuant thereto (Cities Br., p. 4). Therefore, after establishing that both Cities and Texaco were natural gas companies subject to Commission regulation and that during the major portion of the period in question, Texaco had a rate schedule on file covering its sales to Cities, Texaco moved for summary judgment on the principal ground that, since Cities' claim was not based upon the filed rate or upon the Natural Gas Act, its complaint was legally insufficient (R. 3-4).

In the brief filed in opposition to Texaco's motion, Cities conceded for the first time that "the only lawful rate is the filed rate with the Federal Power Commission" and then argued that its payments to Texaco had exceeded the filed rate (R. 4). It was Cities' shift of position that prompted Texaco in its reply brief to specifically raise the jurisdictional question on the grounds that Section 22 of the Act vested exclusive jurisdiction of claims based upon rates filed with the

Federal Power Commission in the federal district courts (R. 4).[2]

This was the posture of the case when Texaco's motion for summary judgment was considered by the Superior Court. Only the question of jurisdiction was involved. Therefore, Texaco made no attempt to brief arguments going to the merits which, of course, involved the level of its filed rate.

However, in so far as pertinent here, the Delaware Superior Court made three major decisions:

First, it decided that the *form* of Cities' action determined, in the first instance, whether a state court or a federal district court had jurisdiction. It reasoned that if the action is "based on a liability or duty created by such Act" then Section 22 reserved jurisdiction for the federal district courts (R. 14); however, if the action is "based on contracts and/or restitution and not on the Natural Gas Act," then the jurisdiction to entertain and determine the case is in a state court (R. 13).[3]

Second, because of the doctrine of the conclusiveness of the rates which were accepted and filed by the Com-

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[2] This is the jurisdictional attack which Cities claims Texaco made as an "afterthought" (Cities Br. p. 12, fn. 10). In its main brief supporting its motion for summary judgment, Texaco had previously called the attention of the Superior Court to the fact that, if Cities had based its suit on the filed rate, it would have been required by Section 22 of the Act to assert its claim in a federal court (R. 220).

[3] As explained, (p. 13 *infra*), the error of both courts below stemmed from the test they applied to determine whether Cities claims were "based" or "founded" upon a duty or liability created by the Act. A state court actually lacks jurisdiction if the "purpose" of the action or the "effect" of its decision would necessarily be to enforce such a liability or duty.

mission,[4] the Superior Court decided that it did not have jurisdiction to *enforce* recovery if the contract price claimed by Cities was different from ("inconsistent with") the filed rate (R. 14), so that "The question then becomes what rate was legally filed?" (R. 18). It then proceeded to determine that the "only lawful filed rate is the contract rate unaffected by the Kansas Order." (R. 21). Thus, apart from the threshhold jurisdictional question raised by Section 22, in order to surmount the absolute statutory finality of the filed rates, the Superior Court also found it necessary to determine, with respect to its enforcement jurisdiction, the ultimate question on the merits—the level of the effective filed rates.

Third, by considering the question to be, "what rate was *legally* filed" (R. 18, emphasis supplied) the court decided that it was not limited to an "interpretation" of what rate the Commission *intended to* or *actually did* accept and file. The court arbitrarily assumed that a state court had the power to ignore the primary jurisdiction of the Commission, and determine what rate the state court thought the Commission *should have* accepted and filed. This construction of its authority is the assumption by a state court of the power and jurisdiction to modify or set aside a rate order of the Com-

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[4] This is the "filed rate" and statutory finality doctrine which has been recognized by all parties connected with this case, and also by both of the Delaware courts (R. 12, 38). The doctrine was expressed by both the majority and minority of this Court in *Montana-Dekota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 251, 255-256.

[5] The action of the Commission of accepting tendered rates for filing is a final order reviewable under Section 19 of the Act. *Continental Oil Co.* v. *Federal Power Commission*, 236 F.2d 839, fn. 3, pp. 841, 852 (5th Cir. 1956) and *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F.2d 860 (10th Cir. 1958), *cert. den.* 358 U.S. 837 (1958)—the *Magnolia* case.

mission by collateral attack. The question of the exclusiveness of the jurisdiction of the Courts of Appeals, under Section 19 of the Act, to review and then to affirm, modify or set aside rate orders of the Commission was thus raised as a major issue in this case.

Accordingly, the Petition for Writ of Prohibition, in the original action in the Delaware Supreme Court, tested the attempt by the state court to intrude upon federal jurisdiction under Sections 4 and 19, as well as Section 22. Petitioners there averred that jurisdiction "is exclusively invested in the federal courts, or in the Federal Power Commission, and that the courts of this state have no jurisdiction thereof." (R. 6).

However, the Delaware Supreme Court, in sustaining the lower court, adopted the reasoning and legal theories of the latter, including the misinterpretations of Sections 4 and 19, now preserved for review by this Court. It thrust aside Section 22, and said that Cities' common law form of action was sufficient to place initial jurisdiction in the state court because:

> ". . . it seems to us that the claims here are not founded upon any liability *created* by the Natural Gas Act, but upon a private contract deriving its force from state law." (R. 41).*

It held that while "adjudication of Cities claims did entail an examination of the Natural Gas Act, the regulations of the Commission and the applicable federal decisions—these have been brought into the cases by way of defense" so that a state court's jurisdiction was not displaced in favor of that of a federal court (R. 41). It interpreted this Court's decision in *United Gas*

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* Although petitioner believes it to be insignificant to a decision in this case, the letter of January 21, 1954 to Texaco from Cities—its so-called "refund-letter"—was filed with the Commission as a supplement to Texaco's rate schedule (R. 155-156, Texaco Main Br., p. 5, fn. 4).

Pipe Line Company v. *Mobile Gas Service Corp.*, 350 U.S. 332, (1956) as preserving common law actions to enforce price provisions in agreements related to interstate sales after a *filed* rate has been established by the Commission. (R. 41).

In addition, the Supreme Court found that in order for the lower court to entertain and enforce Cities claims, that court must determine the level of the filed rate. In doing so, it, too, ignored the rate-establishing orders of the Commission (R. 45), and made its own independent determination of the "filed" rate. By assuming that a state court has power in a "common law" action to modify or set aside a final rate order of the Commission, the Delaware Supreme Court also ignored this Court's teachings in *Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320 (1958). In that opinion a statute, identical with Section 19(b) in all material respects, was held to vest exclusive jurisdiction in federal Courts of Appeals to review orders of the Commission.

Actually the Supreme Court of Delaware even went farther than the Superior Court in emasculating the filed rate and its statutory finality. It interpreted this Court's *Montana-Dakota* decision, *supra*, as holding that the sanctity of the filed rate applied only after the justness and reasonableness of a rate has been determined by the Commission.[7] The Delaware Court said:

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[7] This interpretation cannot be reconciled with the finding in *Montana-Dakota*, *supra*, that:

> "It [the buyer] can claim no rate as a legal right that is other than the filed rate, whether fixed, or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms." (341 U.S. at 251),

which was also the view of the minority:

> "Unless they are challenged either by an interested party or on the Commission's initiative, the filed rates become the legal rates." (341 U.S. at 255).

> "If under the Natural Gas Act a gas producer and a distributor may agree to fix the rate, and from time to time to change it, absent any proceeding before the Commission to regulate the rate, why may they not agree that the rate to be paid shall be the contract rate if the rate imposed by a State Commission shall be held invalid? This, in effect, was what the parties here agreed upon." (R. 41).

Apparently it was this misinterpretation of *Montana-Dakota, supra,* which prompted the erroneous holding that the requirement of exhaustion of administrative remedies prescribed by the Act, which culminates in review under Section 19, would be applicable only "to a suit in the federal court attacking the reasonableness of the rate" (R. 45).[8]

A further clear indication that the Delaware Courts held small regard for the regulatory processes and final orders of the Commission is evidenced by the fact that neither court mentioned the order issuing Texaco's certificate of public convenience and necessity which was unconditioned as to rate. Clearly no consideration was given to the fact that, in issuing that certificate, the Commission was required under Section 7 to evaluate all factors bearing on the public interest with respect to Texaco's 11 cent rate.[9] By determining the filed rate which they thought the Commission *should have* accepted, the state courts have necessarily invaded the Commission's province of matters subject to its regulation.

It is not just Section 22 which is involved in this jurisdictional dispute with the Deleware Courts but

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[8] This holding clearly conflicts with the many Section 19 review cases, especially those cited by Cities (Cities Br., p. 39 fn. 28), which were review of Commission orders *filing* rates—*not* determining the *reasonableness* of those rates.

[9] *Atlantic Refining Co.* v. *New York Public Service Commission*, 360 U.S. 378, 391 (1959), the *Catco* case.

also Sections 4, 7, and 19 of the Act. Nor have these local tribunals shown any substantial deference to important decisions of this Court dealing with the limitations on contract rights arising from the Commission's actions establishing filed rates (*Mobile* and *Montana-Dakota, supra*), the exclusive mode and jurisdiction prescribed by the Act for review of such actions (*Tacoma, supra*), and the effect of issuance of a certificate of public convenience and necessity (*Catco, supra*).

II. SECTION 19 AND SECTION 22 OF THE ACT DEPRIVES THE STATE COURT OF JURISDICTION OF CITIES' CLAIMS.

Cities still misconceives, as did the courts below, the purpose and scheme of the exclusive rate regulatory and enforcement provisions of the Natural Gas Act. It was the failure of the Delaware Supreme Court to appreciate the particular functions of Section 19 and Section 22 of the Act as interrelated with the filed rate doctrine which drove it to strange and distorted interpretations of clear pronouncements of this Court. A proper interpretation and application of the provisions of the Act and the Court's opinions reveals that under no circumstances does a state court have jurisdiction to either determine the actual level of a disputed filed rate or to enforce refund of amounts allegedly paid in excess of that filed rate.

A. The jurisdictional theory of the Delaware Courts erroneously assumes that state courts have jurisdiction to modify or set aside final orders of the Federal Power Commission.

1. In its letter order accepting and filing of Texaco's rate for sales to Cities and establishing Texaco's FPC Gas Rate Schedule No. 100, the Commission advised that any contract provisions which might operate to "change the rates *being charged June 7, 1954*, will con-

stitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act" and for such changes to become effective, notice of such change of rate must be "filed with the Commission" pursuant to said Section 4(d) and the Commission's Regulations. (R. 139, emphasis supplied). The same language was used in the letter order to Pan American (R. 601). No one, including the courts below, disputes the fact that the rate *being charged June 7, 1954* was 11 cents per Mcf (R. 225). Yet both Delaware courts found that if they were to retain jurisdiction of Cities' claims, it was necessary for them to review the law and facts and to find that the "filed rate" was at the same level as an alleged lower "contract" rate. This they did (R. 14, 21, 45). Therefore, they are deprived of jurisdiction under their own theory because jurisdiction to modify or set aside the 11 cent rate, which was the rate obviously made effective by the Commission, is specifically, completely and *exclusively* vested in federal courts. *Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320, 335-336 (1958).

2. Since the subsequent August 29, 1957 letter order accepting and filing Cities letter of January 21, 1954 as part of Texaco's rate schedule also ordered that no change could be made in the rates "being charged June 7, 1954" without notice as required by the Act (R. 155), Section 19(b) also precludes a state court, or even a federal court at this late date, from asserting jurisdiction to enforce Cities claimed "conditional" rate (Cities Br. p. 42). This rate "being charged June 7, 1954" was indisputably the 11 cent rate. Cities failed to file the statutory notice or the necessary complaint needed to reduce that rate—or to require Texaco to do make such filing—in the manner required by Section 4(d). The only way in which Cities "conditional" rate theory could be enforced to change the rate paid on

June 7, 1954 is by modification of the Commission's initial rate-establishing order. This action must come from a federal Court of Appeals. Since Cities slept on its rights, it cannot avail itself of the exclusive jurisdiction of a Court of Appeals. It cannot avoid the Act by the clever design of its pleadings filed in a court without power or jurisdiction to grant relief.

3. The basic error of the Delaware Courts theory of jurisdiction is its assumption of the powers reserved to the Courts of Appeals. This assumption is inherent in its theory. This usurpation of the Section 19(b) review and modification powers is apparent, regardless of the level of the filed rate for the sales in question.

The state courts, in establishing their jurisdiction to entertain Cities suits, asserted a power to determine "what rate was legally filed" (R. 18) on the basis of what these courts felt was settled federal law (R. 45). Hence, these state courts sought to determine what the Commission *should have done*. They considered it unnecessary to determine what the Commission had intended to do, and did do, in relation to Texaco's filings. Regardless, reasoned the Delaware courts, of what the Commission may have done in 1954, this is what it should have done under the law as it stands in 1960. This is the bold exercise of a power to set aside an order of the federal agency. It is a seizure of jurisdictional rights exclusively reserved to the federal courts.

It becomes clear that it is immaterial whether the Delaware courts, in applying their jurisdictional theory, did or did not set aside a "filed rate" established by Commission order—the jurisdictional theory claimed by the Delaware courts necessarily creates in state courts the power to set aside such orders. This is expressly forbidden by Section 19 of the Natural Gas Act.

B. The purpose or effect of an action, not its form, determines whether federal District Courts have exclusive jurisdiction.

4. Texaco's position on the purpose and scope of Section 22 is this—the key to rate regulation is finality of the filed rate. The mandatory filing requirements of Section 4(c) of the Act and the prohibition, by Section 4(d), of any change in that filed rate, except by means of the complete and exclusive procedures prescribed by the Act, establish the basis of that necessary finality. Thus, the Act creates in natural gas companies certain obligations with respect to a filed rate. The moment a filed rate was established for Texaco, whether derived from a contract or a tariff, the Act "created" in Texaco the legal "duty" to charge and collect *only* the filed rate—no more, no less. And, if it should charge more than that rate, no matter what the reason, the Act also "creates" the additional legal "liability" of refunding all excess amounts collected. The reason that Section 22 places in the federal district courts exclusive jurisdiction of all actions to enforce this "duty" or this "liability" is that these legal obligations are created *solely* by statute. Common law defenses of estoppel, waiver, mutual mistake, undue coercion, or even fraud, and the like, are of no avail. There is no excuse for noncompliance with a filed rate (except, possibly, the running of the statute of limitations).[10] Cities common

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[10] Justice Brandeis' summary in *Louisville & N. R.R.* v. *Central Iron & Coal Company*, 265 U.S.59, 65 (1924), is typical of the views expressed by this Court:

> "The shipment being an interstate one, the freight rate was that stated in the tariff filed with the Interstate Commerce Commission. The amount of the freight charges legally payable was determined by applying this tariff rate to the actual weight. Thus, they were fixed by law. No contract of the carrier could reduce the amount legally payable, or release from liability a shipper who had assumed an obligation to pay the charges. Nor could *any* act or omission of the carrier (except the running of the Statute of Limitations) estop or preclude it from enforcing payment of the full amount by a person liable therefor." (Emphasis supplied.)

law form of action, regardless of its being initially "based" or "founded" upon common law theories of contract or restitution is immaterial and has no significance. If its action has as its *purpose* or its *effect* or its *result* the enforcement of the duty and liability created in Texaco by and under the Natural Gas Act, recovery can be enforced only in the federal district courts.

Any other construction of Section 22 would defeat the whole purpose for the finality of the filed rate. If that Section were interpreted as allowing concurrent enforcement jurisdiction in a state court, depending upon whether the action was based or founded upon common law theories or upon the statutory duties or liabilities, the right to raise common law defenses in one court and not in the other could, in many instances, result in different interpretations of the level of the "filed rate."[11] This is the lack of uniformity Section 22 was intended to prevent, not lack of uniformity because this Court could not ultimately review both decisions (Cities Br., pp. 34-35). Moreover, it is in the public interest to establish the finality of a filed rate at the earliest possible moment.

The instant case provides a perfect example of why such concurrent jurisdiction cannot exist. In addition to its common law action in the Delaware court, Cities has recently filed in the federal district court in Delaware, suits against petitioners which are based upon the statutory duties and liabilities created by the Nat-

[11] Since the exclusive jurisdiction to modify or set aside a final order of the Commission establishing a specific filed rate is lodged in the Courts of Appeals by Section 19, neither a state nor a federal district court has jurisdiction to modify or change the level of the rate accepted and filed by the Commission.

ural Gas Act. If these courts have concurrent jurisdiction, depending upon the different forms of action, it is quite possible that each court, under the separate theories and legal principles applicable to the different actions, could find different levels for the "filed rate", and, on review, this Court, would then be faced with the dilemma of sustaining two different price levels—one rate which might properly be based on common law contractual rights, and the other founded on the doctrine of the conclusiveness of the rates accepted and filed by the Commission.

III. THE COMMISSION'S ACTIONS ESTABLISHED A SPECIFIC UNCONDITIONAL FILED RATE OF 11 CENT PER MCF.

The legal effect of Texaco's rate schedule tenders and the orders acknowledging their acceptance and filing by the Commission established as the effective filed rate for Texaco's sales to Cities the rate of 11 cents per Mcf being paid on June 7, 1954. This filed rate has never been decreased, set aside, or conditioned under any of the procedures prescribed by the Natural Gas Act. Even the Delaware Supreme Court appears to concede this (R. 36), so these facts were merely referred to by footnotes in Texaco's main brief (pp. 8-11, fns. 8, 9, 11, 12 and 13). However, Cities has labeled the filed rate "argument" as "obscure" (Cities Br. p. 40), and a summary of the "reasons why" the rate is 11 cents is pertinent.

A. In its rate filing orders the Commission has emphasized the 11 cent rate.

1. On September 24, 1954, when Texaco made its initial rate schedule filing of its June 16, 1949 gas sales contract with Cities, it showed that "in accordance with" the Kansas Minimum Price Order, the rate being charged during June 1954 was 11 cents[12] (R. 130-138). Copies of this filing were served on Cities by mail (R. 127) and were received by Cities (R. 212).

2. On December 29, 1954, the Commission, in a formal meeting, voted to accept this tender for filing (R. 224) and the rate shown for Texaco's Rate Schedule No. 100 (covering the sales in question) was 11 cents per Mcf for June 7, 1954 (R. 225).

3. In its letter order of February 7, 1955, advising of its acceptance for filing of Texaco's initial tender, the Commission warned that changes in the rate *"being charged June 7, 1954"* would require the filing of notice as prescribed by Section 4(d) (R. 139, emphasis supplied). Texaco sent, and Cities acknowledged receipt of, a copy of this order (R. 212).[13]

4. On December 5, 1955, the Commission issued a certificate of public convenience and necessity to Texaco "authorizing the sales" without condition-

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[12] A detailed explanation of its rate and certificate filings is contained in Texaco's Statement of the Case (Texaco Main Br. pp. 6-12).

[13] Cities decries its lack of Commission notice (Cities Br. pp. 42, 44), but its acumen in a similar situation, where it had no more notice than it had here, is illustrated in the *Magnolia* case, *Cities Service Gas Co. v. FPC*, 255 F.2d 860 (10th Cir. 1958), *cert. den.* 358 U.S. 837.

ing in any way the 11 cents rate being paid at that time (R. 179-188). Due notice of the public hearing on this certificate matter had been given by the Commission itself. Other parties intervened; Cities did not. (R. 185).

5. On June 13, 1957, Texaco forwarded to the Commision a notice of change of rate from 11 cents to 11.055 cents to reflect effectiveness of a reimbursement by Cities of 50 per cent of the increased portion of the state severance tax. The increased portion of the tax amounted to one percent of the rate being paid for gas. Thus only on the basis of an 11 cent rate would Cities 50 percent reimbursement amount to .055 cents. Again, Cities was served with a copy of this filing which showed that this increase was computed on the basis of an 11 cent rate (R. 144).

6. On August 21, 1957, the Commission, in formal session voted to accept Texaco's change in rate (R. 226-229). The minutes of this meeting show that Texaco's rate was changed *from 11 cents* to 11.055 cents (R. 229).[14]

7. By letter order dated August 29, 1957, Texaco was advised that its notice of change had been accepted and that the new rate "shall become effective" on July 1, 1957. This order also provided that the new rate could not be changed without prior notice (R. 157-158).

8. Effective as of July 1, 1957, Cities *commenced paying Texaco at the rate of 11.055 cents.*

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[14] Although this one percent tax increase was later declared to be invalid, that does not detract from the point that the Commission's action in accepting the increase shows that it considered Texaco's effective filed rate to be 11 cents.

These facts are clear, cumulative, and compelling. As far as the Commission's orders were concerned, the Commission established as the filed rate the rate of 11 cents per Mcf for Texaco's sales to Cities as of June 7, 1954. From its subsequent actions, it is also clear that the Commission considered that it had established that rate as Texaco's effective filed rate.

The reason for the Commission's action is obvious. In Order 174A issued July 16, 1954, 19 Fed. Reg. 4534 (1954), the Commission said, "a reasonable cut-off date [June 7, 1954] should be fixed in order to avoid confusion in attempting to readjust past transactions." The position of the majority that the effective rate was to be the price being charged and paid on June 7, 1954 was emphasized by Commissioner Digby in his dissent. He said: "In freezing the producers' rates as of June 7, 1954, they are deprived of any opportunity to file as an original rate schedule a sales contract in which the price of gas has increased since June 7, 1954." Although these facts were not argued before the Superior Court they were called to the attention of the Delaware Supreme Court after the former had ruled that the filed rate was the "contract" price.

B. The filed rate was not conditional.

In order to circumvent the exclusive rate-modification jurisdiction of the Courts of Appeals under Section 19(b), Cities now takes the position that its letter of January 21, 1954 created a filed "agreement" (Cities Br. pp. 37, 38) so that when the Kansas Minimum Price Order was declared to be invalid by this Court on January 20, 1958[15] Texaco's June 7, 1954 filed

[15] *Cities Service Gas Company* v. *State Corporation Commission*, 355 U.S. 391 (1958).

rate of 11 cents was somehow retroactively and automatically changed to the lower "contract" price (Cities Br. 42). Cities seems to imply that language used in a letter from Texaco which was responsive to a July 12, 1957 request from the FPC Secretary created this "agreement" which now estops Texaco from claiming its filed rate (Cities Br. pp. 9, 41, 55).

The Secretary's letter asked for submission of "all *papers* related [to the Kansas Minimum Price Order] exchanged with the buyer" (R. 150, emphasis ours). Texaco's reply of July 29, 1957 enclosed copies of Cities' January 21, 1954 letter, and that letter was described as "setting forth the contingent or conditional basis upon which the minimum rate will be paid" (R. 152-153). Contrary to Cities' statement in its brief, Texaco did not say that it was "receiving" the 11 cent rate on any conditional or contingent basis (R. 152).

As Texaco has already explained, it did not include Cities' letter of January 21, 1954 in its rate schedule filings because the Regulations provided for the filing of only the basic gas sales contract "and all supplements or agreements amendatory thereof." Since Texaco had never replied to Cities' letter nor agreed to any refund, that letter had never been considered to be either a contract or an amendment to the basic contract (Texaco Main Br. p. 7, fn. 7). The letter is nothing more than a claim by Cities that its payments would be "involuntary" and that it will "expect" refunds if "overpayments" should result (R. 154). Therefore, Texaco's language which Cities has attempted to point to as constituting an "agreement" is simply an accurate description by Texaco of what Cities' January 21, 1954 letter actually is—a unilateral statement on Cities'

part that, as far as it is concerned, the payments under the old state order were claimed to be involuntary.[16]

Certainly, the Commission has never considered Cities' letter as having the "conditional" effect Cities now claims. In its letter order of August 29, 1957, accepting that letter as Supplement No. 4 to Texaco's Rate Schedule No. 100, the Commission made this clear beyond any doubt. It specifically ordered that any provisions for future *automatic* adjustments in rates or charges" contained in such document, could not operate to "change the rates *being charged June 7, 1954*," until a notice of change in rate was filed with the Commission pursuant to Section 4(d) of the Act and Section 154.94 of the Regulations (R. 155-156). Cities admits it had knowledge of this letter (R. 212).

Therefore, Cities cannot now claim that the decision of this Court holding the Kansas Order to be invalid had the effect of overriding Section 4(d) of the Act and the Regulations of the Commission to cause an "automatic" and retroactive change in the 11 cents rate which was being charged June 7, 1954.[17]

Moreover, Cities' letter was written before Commission regulation was held to be applicable to producers, such as Texaco, so that it could not have been intended to, nor can it now be treated as, changing Texaco's FPC filed rate collaterally.

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[16] Of course, payment of the federal filed rate could not be made on an involuntary, conditional or contingent basis.

[17] Additional reasons why the 11 cents rate was not "conditional" are set out in the Pan American Reply Brief, pp. 22-30.

C. Texaco's certificate of public convenience and necessity is further evidence that the filed rate was 11 cents.

The principal fault Cities finds with Texaco's certificate is that "The order made no mention of price" (Cities Br. p. 49). The short answer to this argument is that no orders of the Commission issuing certificates to producers prescribe a specific price *unless the initial price is specifically and clearly conditioned to a lower rate.*

Cities seems to attach significance to the fact that the certificate order authorized Texaco "to *continue* the service being rendered" (Cities Br. 49, emphasis supplied). There is no question that the Commission could have denied a certificate and required Texaco to discontinue its sales or, as is more pertinent here, it could have exercised its Section 7(e) powers and authorized such continuance only on condition that Texaco reduce its price to a lower rate.[18] The Commission did neither. As this Court has said in its unanimous *Catco* decision, *supra,* Section 7 "requires a most careful scrutiny and responsible reaction [by the Commission] to initial price proposals of producers" and "requires the Commission to evaluate all factors bearing on the public interest" (360 U.S., at page 391). The Commission is presumed to have done its duty. *Federal Power Commission* v. *Union Producing Co.,* 230 F. 2d 36, 40 (D.C. Cir. 1956). Therefore, the fact that no rate condition was imposed is conclusive as to Commission consideration of the 11 cent rate, and its conclusion that Tex-

[18] At the time Texaco's certificate was issued, December 5, 1955, the Commission was well aware of its rate conditioning powers. It had previously conditioned the rate of an independent producer to a lower level in a certificate proceeding. See *Signal Oil and Gas Co.* v. *F.P.C.,* 238 F. 2d 771 (3rd Cir. 1956).

aco's effective filed rate was required by the public convenience and necessity.

Although Cities had been given "due notice" by the Commission of the "public hearing" on Texaco's certificate matter (R. 183), it entered no protest. The unconditioned certificate was issued December 5, 1955 and accepted by Texaco by letter dated December 16, 1955 (R. 188, 191). Cities still made no protest and continued to pay at the 11 cents rate for the then permanently and unconditionally certificated sales. By so doing, it forfeited its last opportunity to challenge the 11 cents rate through court review.[19]

Cities' attempt to discredit the finality of Texaco's certificate by reference to special language inserted by the Commission in the certificate issued to Pan American after a stipulation in which Cities joined (Cities Br. p. 50, 3a), simply demonstrates the weakness of Cities' "conditional" rate argument. No such language is included in Texaco's certificate order. Furthermore, the specific language included in the Pan American certificate order, after a stipulation in which Cities joined, does not in any way change the Commission's earlier actions making rates effective under Section 4. (Pan Am. Reply Br., pp. 27-29).

Thus Cities' arguments have no foundation. The effective rates for both petitioners are and have been the rates shown by Commission actions under Section 4 of record here. The state courts obviously have no jurisdiction over Cities' collateral attacks.

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[19] Of course, if Cities had protested the issuance of the unconditioned certificate and pursued its administrative remedies, the Commission could only have conditioned the rate prospectively. The 11 cents rate had become the legal effective rate when Cities failed to challenge the Commission's letter order of February 7, 1955, accepting Texaco's initial rate filings (R. 138-144).

CONCLUSION

For the above reasons and those set forth in petitioner's main brief it is respectfully submitted that the judgment of the Supreme Court of Delaware should be reversed and vacated, and that the Writ of Prohibition prayer for in that court should issue.

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April, 1961

SUPREME COURT OF THE UNITED STATES

Nos. 80 and 81.—October Term, 1960.

Pan American Petroleum Corporation, Petitioner, 80 v. Superior Court of the State of Delaware in and for New Castle County, et al.	On Writs of Certiorari to the Supreme Court of Delaware.
Texaco, Inc., Petitioner, 81 v. Superior Court of the State of Delaware in and for New Castle County, et al.	

[May 29, 1961.]

Mr. Justice Frankfurter delivered the opinion of the Court.

This case presents for review the judgment of the Supreme Court of Delaware denying a petition for a writ of prohibition to prevent further proceedings before the Superior Court of the State of Delaware, in and for New Castle County, in actions by Cities Service Gas Company against petitioners involving contracts for the sale of natural gas by petitioners to Cities Service. The claim of petitioners is that the Natural Gas Act, 52 Stat. 821, as amended, 15 U. S. C. § 717 *et seq.*, has deprived state courts of jurisdiction over the subject matter of these cases. The sole question, both below and here, is whether the state courts had jurisdiction.[1] The impor-

[1] It is apparent from the opinion of the Delaware Supreme Court that this was the only question decided there. See also *Clendaniel* v. *Conrad*, 26 Del. 549, 598, 83 A. 1036, 1052.

"The writ of prohibition . . . issues only from a superior court to an inferior court, tribunal or judge, and only for the purpose of

tance of the problems thereby raised justified their disposition here, so we granted the petition for certiorari. 363 U. S. 818.

Cities Service is a natural gas pipeline company. Petitioners are producers of natural gas. Cities Service purchases natural gas from petitioners and transports it through its pipelines, in interstate commerce, for sale to local distributing companies. During the period 1949–1951 Cities Service entered into contracts for the purchase of natural gas produced by petitioners from the Hugoton Field in Kansas. In each instance the price agreed upon was less than eleven cents per thousand cubic feet (Mcf) measured on a pressure base of 14.65 pounds per square inch absolute (psia).

On December 2, 1953, the Corporation Commission of the State of Kansas promulgated an order, to take effect on January 1, 1954, fixing a minimum price of eleven cents per Mcf on a pressure base of 14.65 psia for gas taken from the Kansas Hugoton Field. The effect of this order was to require Cities Service to pay petitioners at a higher rate than those specified in the pre-existing contracts. Cities Service brought suit in the Kansas courts to obtain judicial review of the order.

On January 21, 1954, Cities Service advised each of the petitioners by letter of the Kansas minimum-rate order and of its suit for judicial review of that order, adding the following:

> "Pending final judicial determination of the said Order and beginning January 1, 1954, Cities Service Gas Company intends to pay for all gas purchased by it in the Kansas Hugoton Field in strict compliance with the terms and conditions of the said Order.

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keeping such inferior court within the limits of its jurisdiction. That is the sole purpose of the writ."

Accord, *Knight* v. *Haley*, 36 Del. 366, 374, 176 A. 461, 464; *Canaday* v. *Superior Court*, 49 Del. 332, 338–339, 116 A. 2d 678, 681–682.

> Such complicance with said Order by this Company, however, is made to avoid the penalties and actions provided by the Kansas statutes for a violation thereof, and the payments made to you in compliance with said Order pending its final judicial determination are to be considered and accepted by you as involuntary payments on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said Order.
>
> "In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments."

Thereafter, each voucher check sent by Cities Service to petitioners in payment for gas purchased bore a notation stating that it was tendered "subject to the provisions" of the January 21, 1954, letter. Petitioners cashed these checks without objection to the conditions of their tender. Petitioner Pan American Petroleum Corporation (formerly Stanolind) wrote in reply to the Cities Service letter of January 21:

> "We construe the last paragraph of said letter to mean that Cities will expect Stanolind to refund to it the amount of over-payments, if any, without any interest thereon should the said Order of December 2, 1953 be finally judicially modified or declared to be invalid in whole or in part by an adjudication which would be binding and controlling on Stanolind. We will, therefore, accept payments on this basis."

Petitioner Texaco, Inc., acknowledged receipt of Cities Service's payment of February 25, 1954, by a letter dated March 2, 1954, without objection to the conditions of payment.

On June 7, 1954, this Court, in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672, held that the jurisdiction of the Federal Power Commission extended to "the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company." 347 U. S., at 682. Following the *Phillips* decision, the Commission, in accordance with the provisions of the Natural Gas Act, on July 16, 1954, issued an order requiring independent producers to file with the Commission rate schedules setting forth the terms and conditions of service and all rates and charges for transportation or sales effective on June 7, 1954. "Rate schedule" was defined to mean "the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954 . . . ." 18 CFR § 154.93. In compliance with the Commission's directive, petitioner Texaco filed the basic contract between it and Cities Service, an amendatory letter, sample billing statements, the Kansas minimum-rate order, and the Cities Service letter of January 21, 1954. Petitioner Pan American filed its basic contract with Cities Service, a number of supplemental letters and agreements (not including the letter of January 21, 1954), a sample billing, and the Kansas order. With reference to that order, Pan American explained that it had been upheld by a court of competent jurisdiction and that therefore the gas sales contract had "in effect" been "amended thereby."

On December 8, 1956, the Supreme Court of Kansas sustained the validity of the Kansas Corporation Commission's minimum-rate order, *Cities Service Gas Co.* v. *State Corporation Comm'n*, 180 Kan. 454, 304 P. 2d 528, but on January 20, 1958, that decision was reversed here, *Cities Service Gas Co.* v. *State Corporation Comm'n*, 355 U. S. 391.

In complaints filed in the Superior Court of Delaware in June of 1958, Cities Service set forth the original contracts between the parties, the Kansas minimum-rate order and its bearing on the contractually determined prices, the letter of January 21, 1954, the voucher checks, other relevant correspondence, and this Court's reversal of the Kansas Supreme Court's decision upholding the order's validity. On the basis of these allegations Cities Service sued for overcharges by Texaco in the sum of $412,995.95 and Pan American of $10,324,468.67, paid under compulsion of the Kansas order for gas purchased at rates higher than those stipulated by contract. After intermediate procedural steps, the defendants moved for summary judgments, which were denied. There followed this petition for a writ of prohibition, attacking the jurisdiction of the Superior Court to entertain the actions brought by Cities Service.

The Supreme Court of Delaware sustained the jurisdiction of the Superior Court over these causes, stating that the claims of Cities Service "are not founded upon any liability *created* by the Natural Gas Act, but upon a private contract deriving its force from state law." (Emphasis in the original.) *Columbian Fuel Corp.* v. *Superior Court*, 158 A. 2d 478, 482.

> "It is certainly true that the adjudication of these claims does entail an examination of the provisions of the Natural Gas Act, the regulations of the Commission, and the applicable federal decisions. But these have been brought into the cases by way of defense to complaints which, on their face, are based on nothing more than contracts to refund amounts measured by the contract or 'filed' rate and the rate fixed by the Kansas order. The general rule is that in such a case the plaintiff's suit is not one arising under federal law. . . ." 158 A. 2d, at 483.

The argument against this conclusion runs as follows. Under the Natural Gas Act the prices to be paid for natural gas sold wholesale in interstate commerce must be in accordance with the rates filed with the Federal Power Commission. Since the suits instituted by Cities Service involve rates so filed, they must either be to enforce a filed rate or to challenge a filed rate. If the former, they are subject to § 22 of the Act which provides, for present purposes, that "The District Courts of the United States . . . shall have exclusive jurisdiction of violations of this [statute] or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this [statute] or any rule, regulation, or order thereunder." 52 Stat. 833, 15 U. S. C. § 717u. If the latter, they lie within the purview of § 19 of the Act, which provides for review of Commission orders in the United States Courts of Appeals. 52 Stat. 831, 15 U. S. C. § 717r. In either case, the state courts are deprived of jurisdiction.

But questions of exclusive federal jurisdiction and ouster of jurisdiction of state courts are, under existing jurisdictional legislation, not determined by ultimate substantive issues of federal law. The answers depend on the particular claims a suitor makes in a state court—on how he casts his action. Since "the party who brings a suit is master to decide what law he will rely upon." *The Fair* v. *Kohler Die & Specialty Co.*, 228 U. S. 22, 25, the complaints in the Delaware Superior Court determine the nature of the suits before it. Their operative paragraphs demand recovery on alleged contracts to refund overpayments in the event of a judicial finding that the Kansas minimum-rate order was invalid, or for restitution of the overpayments by which petitioners have allegedly been unjustly enriched under the compulsion

of the invalid Kansas order. No right is asserted under the Natural Gas Act.

The suits are thus based upon claims of right arising under state, not federal, law. It is settled doctrine that a case is not cognizable in a federal trial court, in the absence of diversity of citizenship, unless it appears from the face of the complaint that determination of the suit depends upon a question of federal law. See, *e. g.*, *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U. S. 667, 672, and cases cited. Apart from diversity jurisdiction, "a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. . . . and the controversy must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal. . . ." *Gully* v. *First National Bank*, 299 U. S. 109, 112–113.

For this requirement it is no substitute that the defendant is almost certain to raise a federal defense. See *Skelly Oil Co.* v. *Phillips Petroleum*, *supra*; *Gully* v. *First National Bank*, *supra*, and authorities cited in those cases. Equally immaterial is it that the plaintiff could have elected to proceed on a federal ground. *Henry* v. *A. B. Dick Co.*, 224 U. S. 1, 14–17. If the plaintiff decides not to invoke a federal right, his claim belongs in a state court.

The rights as asserted by Cities Service are traditional common-law claims. They do not lose their character because it is common knowledge that there exists a scheme of federal regulation of interstate transmission of natural gas. What was said in *Gully* v. *First National Bank*, 299 U. S., at 116, is apposite.

> "We recur to the test announced in *Puerto Rico* v. *Russell & Co.*, *supra*: 'The federal nature of the right to be established is decisive—not the source of the authority to establish it.' Here the right to be estab-

> lished is one created by the state. If that is so, it is unimportant that federal consent is the source of state authority. To reach the underlying law we do not travel back so far. By unimpeachable authority, a suit brought upon a state statute does not arise under an act of Congress or the Constitution of the United States because prohibited thereby. *Louisville & Nashville R. Co.* v. *Mottley, supra.* With no greater reason can it be said to arise thereunder because permitted thereby."

We are not called upon to decide the extent to which the Natural Gas Act reinforces or abrogates the private contract rights here in controversy. The fact that Cities Service sues in contract or quasi-contract, not the ultimate validity of its arguments, is decisive.

Nor does § 22 of the Natural Gas Act help petitioners. "Exclusive jurisdiction" is given the federal courts but it is "exclusive" only for suits that may be brought in the federal courts. Exclusiveness is a consequence of having jurisdiction, not the generator of jurisdiction because of which state courts are excluded. This was settled long ago in *Pratt v. Paris Gas Light & Coke Co.*, 168 U. S. 255, a case involving a grant of exclusive jurisdiction to the federal courts in all cases arising under the patent laws. Suit was brought in a state court on a common-law contract claim. The complaint contained no mention of a patent, but the invalidity of certain patents was set up in defense. In response to the argument that this deprived the state courts of jurisdiction, the Court said:

> "Section 711 [the jurisdictional provision] does not deprive the state courts of the power to determine *questions* arising under the patent laws, but only of assuming jurisdiction of *'cases'* arising under those laws. There is a clear distinction between a case and a question arising under the patent laws. The former arises when the plaintiff in his opening plead-

> ing—be it a bill, complaint or declaration—sets up a right under the patent laws as ground for a recovery. Of such the state courts have no jurisdiction. The latter may appear in the plea or answer or in the testimony. The determination of such question is not beyond the competency of the state tribunals." (Emphasis in the original.) 168 U. S. at 259.[2]

Petitioners contend that to permit the state courts to entertain the suits brought by Cities Service will jeopardize the uniform system of regulation that Congress established through the Natural Gas Act. Apart from other considerations that dispel such fears, it should be remembered that the route to review by this Court is open to parties aggrieved by adverse state-court decisions of federal questions. In *Great Northern R. Co.* v. *Merchants Elevator Co.*, 259 U. S. 285, the question before the Court was whether not merely the state courts but any court had jurisdiction to construe a tariff prior to consideration of the disputed question of construction by the Interstate Commerce Commission. It was argued in that case, as it is argued here, that to permit entry into the courts, without initial resort to the Commission, would destroy essential uniformity. The answer there given by Mr. Justice Brandeis, speaking for the Court, applies here:

> "This argument is unsound. It is true that uniformity is the paramount purpose of the Commerce Act. But it is not true that uniformity in construc-

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[2] The foregoing conclusions are not affected by want of explicit limitation to jurisdiction "arising under" the Natural Gas Act. Such limitation is clearly implied, as the authoritative Committee Reports indicate. "This section [referring to § 22] imposes appropriate jurisdiction upon the courts of the United States over cases arising under the act." H. R. Rep. No. 709, p. 9, 75th Cong., 1st Sess.; S. Rep. No. 1162, p. 7, 75th Cong., 1st Sess.

> tion of a tariff can be attained only through a preliminary resort to the Commission to settle the construction in dispute. Every question of the construction of a tariff is deemed a question of law; and where the question concerns an interstate tariff it is one of federal law. If the parties properly preserve their rights, a construction given by any court, whether it be federal or state, may ultimately be reviewed by this court either on writ of error or on writ of certiorari; and thereby uniformity in construction may be secured. Hence, the attainment of uniformity does not require that in every case where the construction of a tariff is in dispute, there shall be a preliminary resort to the Commission." 259 U. S., at 290–291.

We hold that the state courts of Delaware do have jurisdiction to hear and decide the claims that Cities Service has formulated.

Affirmed.